

Fra. Hargrave
1764

THE
Compleat Arbitrator:

1592

OR, THE
Law of Awards and Arbitraments;
CONTAINING

Plain and easy DIRECTIONS to all kind of
ARBITRATORS, what Matters are proper
to be submitted to Arbitration, and in what
Manner; the Nature and different kinds of
Submissions, the Parties to the Submission,
the Duty and Office of ARBITRATORS and
UMPIRES; the right Manner of making
and delivering up Awards, how Awards have
been construed in Equity, the Manner of
making and enforcing the Performance of
Awards, when the Submission has been made
a Rule of Court; the right Method of set-
ting forth and pleading Awards.

WITH
Precedents of SUBMISSIONS, AWARDS, and
PLEADINGS in all CASES.

By a Gentleman of the Middle-Temple.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING,
(Assigns of *Edward Sayer, Esq;*) for JOHN
WORRALL, at the Dove in Bell-Yard, near
Lincoln's Inn. MDCCXXXI.

12



T H E
P R E F A C E.

IT is one of the greatest Objections to our Laws, that the Way to the Knowledge of them is so dark and rugged, so full of Windings and Turnings, that the most Knowing very often find it difficult to be able to pronounce with Certainty, concerning some Points they are solicitous about.

And this Difficulty arises not only from the complex Nature of Law in general, but likewise from that unhappy Frame and Texture in which we see our Laws composed.

The Knowledge of our Law must for the most part be drawn from the Books of Reports, which are now increased to a great Number; these Books contain great Variety, and almost an infinite Number of Cases, some of them published in the Life-time of the Authors, and some from imperfect Manuscripts of Persons deceased, which were never designed for publick Use; and all of them collected

A 2

by

by Men of different Abilities and Understandings: For this Reason it is, that we see them labouring with Confusion, Intricacy, and Incertainty, and contradicting each other, not only in similar Cases, but likewise in one and the same Case.

And hence it is, that the Method of writing general Abridgments, or particular Treatises on some general and useful Head of the Law, has received a Sanction; the Design of which being to bring together, and range in proper Order, the Cases pertinent to any one Subject, a Person may the more easily unravel and rescue it from this Confusion and Intricacy, and by seeing all the Cases together at one View, discover which of them do actually contradict one another, or only seem to do so; how our Modern Resolutions differ from the Antient, and upon what Grounds and Distinctions.

And this, when done with Care and some Accuracy, has been always thought to be useful to the Profession of the Law; and in this respect the following Treatise, if it shall be thought to answer any of these Purposes, will have its Share of Merit, as its Subject laboured under these Difficulties as much as any other.

But

THE PREFACE.

V.

But what is expected will chiefly recommend it, and what indeed was principally designed, is, that it will be a Means of saving the Time and Expence, which too many have unhappily experienced attends the Prosecutions of Suits in Law and Equity; and surely there needs not many Arguments to enforce its Use upon this Account.

It is true, there have been some late Acts of Parliament made, which seem greatly to facilitate the Methods of Proceeding in Law, and that several new Remedies are found out, which seem more sure and expeditious for recovering in Civil Actions, than those formerly used. But notwithstanding these, have not most Causes of Consequence which come into Westminster-Hall, a Mixture of Law and Equity, by which, and of Necessity they must, according to the Practice of our Courts, be long in Agitation before they can be determined? Is not the Construction of those Acts, which have been made for the Amendment of the Law, and furtherance of Justice, as difficult and perplexing as any Part of the Law? Are not the great Questions concerning what is Form, and what Substance, as vexatious and expensive as the strict Rules of Pleading; and have not Suitors been as often disappointed by them? And as it may be

A 3 justly

justly feared, that whatever new Acts or Remedies may be devised, may partake of some of these Inconveniencies; surely it will never be less eligible, to do at first what the Judges, after several Trials and Arguments, often advise at last, viz. to compromise or refer the Matter; which being agreed upon in any Case, that it may be done effectually, and not be the Foundation of new Contention and Debate, as it often happens by the Ignorance of the Arbitrators, &c. is the End of the ensuing Treatise.

THE

THE CONTENTS.

CHAP. I.

Directions to the Arbitrators: Contain-
ing,

Sect. I. <i>Matters of Submission</i>	Page 3
Sect. II. <i>The Submission</i>	5
Sect. III. <i>Parties to the Submission</i>	7
Sect. IV. <i>The Arbitrators</i>	9
Sect. V. <i>The making and delivering the Award</i>	11

CHAP. II.

Matters in Controversy, which may or
may not be submitted to Arbitra-
ment: Containing,

Sect. I. <i>Matters of Controversy, which may be submitted to Arbitrament either by Word or by Writing</i>	19
Sect. II. <i>Matters in Controversy, which cannot be submitted otherwise than by Writing</i>	22
Sect. III.	

The CONTENTS.

Sect. III. Concerning Matters of Freehold, which cannot regularly be submitted otherwise than by Bond	Page 23
Sect. IV. Concerning Things certain, as Debts due by Bill, Bond or Record	24
Sect. V. Concerning Criminal Offences, which cannot be submitted	28
Sect. VI. Matrimony, or any Contract relating thereunto, which cannot be submitted	29
Sect. VII. Things not in Being, although they happen before the Award be made, cannot be submitted	Ibid.

CHAP. III.

The Submission: Containing,

Sect. I. Concerning the making the Submission	33
Sect. II. Concerning the Construction which has been made of the Submission	36
Sect. III. Concerning those Matters which may be said to be submitted	40
Sect. IV. Concerning those Submissions which are said to be General or Special, Absolute or Conditional	43
Sect. V. Precedents of the different kinds of Submissions	48

CHAP.

The CONTENTS.

CHAP. IV.

Parties to the Submission: Containing,

- Sect. I. *What Persons the Law allows of as good Parties to the Submission* Page 62
Sect. II. *What Persons are disabled from being Parties* 65
Sect. III. *How the Submission and the Award thereupon may be made between them* 67
Sect. IV. *Who shall take Advantage of the Award, or are bound by it, though they have not been made Parties* 70

CHAP. V.

The Arbitrators and Umpire: Contain-
ing,

- Sect. I. *Who may be proper Arbitrators* 73
Sect. II. *Concerning their Authority and Duty* 76
Sect. III. *Revocation of their Power and Authority, and the Consequence thereof* 82
Sect. IV. *Concerning the Umpire, and when his Authority commences* 83

CHAP.

The CONTENTS.

CHAP. VI.

Of the Award: Containing,

- Sect. I. *Awards must be made according to the Submission, with respect to the Things submitted* Page 95
- Sect. II. *Awards must be made according to the Submission, with respect to the Persons* 105
- Sect. III. *Awards must be made according to the Submission, with respect to the Making, Signing and Sealing, Delivering, and other Circumstances* 124
- Sect. IV. *An Award ought to be Certain* 148
- Sect. V. *That the Award be final, so as to make an end of the Matters in Controversy* 161
- Sect. VI. *An Award must appoint the doing something Beneficial to each Party* 167
- Sect. VII. *An Award must appoint the doing of a Thing that is reasonable, possible and lawful* 175
- Sect. VIII. *Awards void in Part, and good for the rest, and void in Part, void for the Whole* 178
- Sect. IX. *Concerning the Performance of the Award* 183
- Sect. X. *Precedents of different kinds of Awards* 180

The CONTENTS.

CHAP. VII.

How Awards have been construed in Equity: Containing,

Sect. I. <i>Concerning the Matter to be submitted</i>	Page 213
Sect. II. <i>Concerning the Submission</i>	215
Sect. III. <i>The Parties to the Submission</i>	216
Sect. IV. <i>Concerning the Arbitrators and Umpire</i>	217
Sect. V. <i>Concerning the Award, and for what Causes it shall be set aside</i>	218

CHAP. VIII.

Of Submissions made a Rule of Court, and Awards made thereupon: Containing,

Sect. I. <i>How the Submission is to be made a Rule of Court</i>	225
Sect. II. <i>What shall be a Breach of the Rule</i>	228
Sect. III. <i>The Method of enforcing the Performance of Awards made pursuant to a Rule of Court</i>	229
Sect. IV. <i>What shall excuse the Nonperformance of the Award</i>	233

CHAP.

The CONTENTS.

CHAP. IX.

Pleadings in Awards and Arbitraments : Containing,

Sect. I. *Concerning the Declaration and Manner of setting forth the Award therein*
Page 238

Sect. II. *Concerning the Plea of the Defendant, whether relating to the Performance of the Award, or when, or in what Manner he may plead the Award in Bar of any other Action*
241

Sect. III. *Of the Replication and Manner of setting forth the Award, and assigning a Breach*
249

Sect. IV. *Of the Rejoinder, when it shall be a Departure or not*
255

Sect. V. *Of Demurrers, either to the Declaration, Plea, Replication, &c.*
258

Sect. VI. *Precedents of Pleadings in Awards*
260

THE

(1)

THE COMPLEAT
ARBITRATOR.

CHAP. I.

Directions to the Arbitrators.

1. **A** *Rbitrament* (*Arbitrium, Laudum, Compromissum*), or an *Award*, is the Determination of Two or more Persons, at the Request of two Parties at least, who are at Variance, for ending the Controversy without publick Authority.

2. It is called an *Arbitrament*, because that the Parties have willingly submitted their Differences to others, to determine them arbitrarily, and according to their own Opinions and Judgments, as honest and disinterested Men, and not according to Law. It is called an *Award* from the French Word *Agarder*, which signifies to judge or decide; and it has heretofore been called *Love-Day*, because of the Quiet and Tranquility which

B

usually

The Compleat Arbitrator.

usually followed the Ending of the Controversy.

3. As there is no Man who has not more or less made Observations on the Proceedings of the Courts of Law and Equity, and who has not likewise, in some Measure, made Complaints of the Expensiveness and Dilatoriness of the Proceedings and Determinations in those Courts; and who does not wish (if he has any Good Will to Mankind at all) that all Men should have Justice done them with more Expedition and less Expence, than attends the Prosecution of a Cause at Law; it will not be improper, nor I hope an unacceptable Undertaking, to endeavour, by laying down the whole Learning of *Awards* and *Arbitraments*, which hitherto has lain dark and obscure, and as intricate and perplexed as any General Head of our Law, to assist Mankind in making them better Friends and Neighbours, and in securing to them their Fortunes and Possessions, and to prevent that even this Method of determining Controversies may not be (as it often happens) the Foundation of new Broils and Contentions.

4. For this Purpose (and as all Men, who are Arbitrators, are not Lawyers) I have in this Chapter particularly laid down, in a plain and easy Method, those Things which seem clear and uncontroverted in our Law-Books, and which are chiefly necessary for an Arbitrator to have his Eye upon, who would *effectually* determine the Matters in Controversy submitted to his Judgment; and this I have done under these five Things, which

The Compleat Arbitrator.

3

which are incident to every Award or Arbitrament, *viz.* *Matters of Submission, the Submission, Parties to the Submission, the Arbitrators, the Making and Delivering of the Award.*

Sect. I. Matters of Submission.

Sect. II. The Submission.

Sect. III. Parties to the Submission.

Sect. IV. The Arbitrators.

Sect. V. The Making and Delivering the Award.

S E C T. I.

Matters of Submission.

1. **A**LL Matters and Disputes whatsoever (except criminal Offences, or concerning the Enforcing or Dissolving a Marriage) may be submitted to Arbitrament, observing the Manner the Law requires the Submission should be.

2. All Matters of Freehold, or any Right or Title to Lands or Tenements, cannot be submitted to Arbitrament, either by Parol, by Rule of Court, or by Deed or Agreement in Writing; so that when there is any Difference concerning these Matters, it is necessary that the Parties should be bound in mutual Obligations to stand to the Award,

1 Rol. Abr.

244

4 Co. 1. a.

B 2

3. A

1 Rol. Abr.

264.

Cro. Jac. 647.

3. A Thing certain, as a Debt due by Bond or Record, an Annuity, &c. cannot regularly be submitted but by Writing, and it is most adviseable that the Parties enter into Bonds.

West. Symb.

Part 2. §. 33.

2 Vent. 109.

4. Criminal Matters, as Treasons, Murders, Felonies of all Kinds, cannot be submitted to Arbitrament; for it is for the Good of the Commonwealth, that such Offenders be made known and punished.

1 Rol. Abr.

252.

5. Matrimonial Causes, or any Thing concerning the Contract or Dissolution of the Marriage, cannot be submitted to Arbitrament.

22 H. 6. 39.

9 Co. 78.

6. But all Actions personal and incertain, as Trespafs, Conspiracy, Maintenance, &c. may be submitted without Writing: But as such a Submission is attended with manifest Inconveniency, both in Regard of the Difficulty in obliging the Party to perform the Award, and likewise that it may be * revoked at Pleasure, without any Inconveniency, it is most prudent that a Submission of those, as well as all others, should be by Bond.

* *Ex nuda Submissione non oritur Actio.*

S E C T.

The Compleat Arbitrator.

5

SECT. II.

The Submission.

1. **THE** Submission is the Power given the Arbitrators to pronounce Sentence between the Parties. Of Submissions some are general, as of all Demands whatsoever; or special, as of some certain Matters in Controversy; they may likewise be absolute or conditional; absolute, as not restraining the Arbitrators from making an Award of the Whole, or of any Part of the Matters submitted; conditional, by which they are tied down to make their Award according to the Words of the Submission.

2. And then note, that if the Submission be absolute, and general, or of several Things, the Arbitrators may not only make an Award of Part of those Things, but likewise, if they make a good Award as to Part, and a void Award as to another Part, the Award shall stand for so much as is good, unless it has a Relation to the void Part; for which Reason a general Submission, with a Power to the Arbitrators to make their Award of the Whole, or any Part of the Matters in Controversy, seems to be the best, and may prevent several Suits and Debates, which have arisen on this Distinction.

3. Submissions are made by *Bond*, with a Condition to perform the Award; by *Rule of Court*, by *Word*; and they may be made

B 3

by

West. Symb.
2 Part, 163.
9 Rep. 78.

The Compleat Arbitrator.

by *Covenant* to stand to the Award; tho' this last Method is seldom used.

4. A Submission by Bond, as it is the most frequent, so it is by far the best; the Penalty of the Bond should be the Value of the Thing submitted, so that the Party may rather abide by the Award, than forfeit his Obligation. Each Party must give the other a Bond, which Bond and Condition must contain exactly the same Words, only changing the Names of the Parties: It is likewise necessary to mention in the Submission, the Time in which the Award is to be made, and when to be delivered, that so the Parties may take Notice of it at their Peril.

5. A Submission by Rule of Court is made pursuant to the Statute 9 & 10 *W. & M.* it is made by the Parties signifying their Consent in Writing, and getting a Counsel in any of the Courts, in which you would have it made a Rule to move the Court for that Purpose; which is never denied, provided it be concerning a Thing, for which there is no other Remedy than by *Personal Action* or *Suit in Equity*; and then the Party is liable to the same Penalties that he would be for disobeying any other Rule of Court. See the Chapter concerning Awards made by Rule of Court.

6. Submissions by Parol are almost out of Use, and never practised but when the Controversy is of some small or insignificant Matter, and very justly; for it is highly necessary for the Arbitrators to know their Power, and that the Parties know how far they

they are liable to their Sentence, and that each Party may reap the Fruit of the Thing awarded him, with Certainty and Expedition.

7. Submissions by *Covenant* are likewise seldom used, for tho' they contain the same Certainty with a Bond, yet the Method of suing on a Covenant is different, and more difficult and perplexed than in suing on a Bond.

S E C T. III.

Parties to the Submission.

1. **R**egularly all Persons whatsoever may submit to an Arbitrament, but they must do it willingly; for if they are compelled to it by *Threats, Dures, &c.* the Award will be void; but *Infants, Feme Coverts*, and they who have *joint Power* with others, are excepted. 7 E. 4. 21.

2. It is held clearly in two or three Cases, 13 H. 4. 12.
That the Submission of an Infant shall not March. 111.
bind him; but it is likewise said, That he may submit to an Award, and, when he comes of Age, agree or not agree to it, as he pleases; but as a Court of Equity will not Decree an Award to bind an Infant, unless it be apparently for his Advantage, it is most expedient that he should not be made a Party to the Submission, unless it be by Order of Court. 1 Jones 164.
1 Chan. Cases
279.

3. A Feme Covert cannot of herself submit to an Award, but in some Cases it is proper Cro. Jac. 447.

1 Rol. Abr.
246.

and necessary that she be joined with her Husband; for the Awarding a Thing to be done by or to a Man's Wife, is as much void as if she were a Stranger; but in most Cases where the Husband becomes intitled to any Right, or becomes any Way chargeable by the Intermarriage, it is sufficient that he alone be made a Party.

21 E. 4. 13.

4. They who have a joint Power with others cannot singly submit in Relation to such Power, without their Fellows; as a Dean without a Chapter, a Mayor without his Commonalty, the Master of a College or Hospital without his Fellows; and so of other Societies and Guilds.

Cro.Car.433.

5. If there is a Controversy between Two, who are jointly interested, and a third Person, and the Two thus jointly interested are not willing to enter into a joint Bond, by which they would be bound for each other; they may enter into separate Bonds, and it will be good.

21 H. 7. 29.

1 Vern. 259.

6. If Divers of the one Part submit themselves to the Award of certain Persons, and divers of the other Part, the Arbitrators may by the Submission have Power to make an Award of Matters between them jointly, and likewise of Matters between them separately.

Skin. 679.

7. One Man may submit for another; but *note*, That if there are mutual Releases awarded, the Release must be made to him on whose Behalf the Submission was, and not to the Party who submitted.

S E C T.

SECTION IV.

The Arbitrators.

1. **A**Rbitrators are private extraordinary Judges, chosen by the Parties to give Judgment between them to end the Debate; it is often said, and almost established as a Rule, that neither natural nor legal Disabilities do hinder any one from being an Arbitrator; for if they are incompetent Judges, the Fault is in those who choose them; but they must, notwithstanding this, have some common Sense as well as common Honesty; for if they err in a Point of Law, or are mistaken in a Matter of Fact, their Award will in many Cases be set aside, particularly in a Court of Equity; so likewise if they exceed their Authority, or are guilty of Partiality, Corruption, or Dishonesty. 2 Vern. 705.

2. A Party in Interest cannot be an Arbitrator; as where there was a Controversy between *A.* and *B.* and *B.* consented to refer the Matter to *A.* and it was held that his Award was void. Hard. 44.

3. The Arbitrators are to give one intire and compleat Judgment on all the Matters submitted to them; therefore it is not adviseable for them to consider Part of the Matter submitted at one Time, and so give Judgment thereupon, and Part at another, and so give distinct Judgments; neither can they regularly reserve any Power to themselves, 1 Rol. Abr. 250.

The Compleat Arbitrator.

selves, so as to settle any Point after the Time allowed them to make their Award is expired; but they may consider one Part one Day, and another Part another Day, and on the last Day give a compleat Judgment.

5 Rep. 78.

4. The Arbitrators cannot assign their Power, for they have but a bare Authority.

5. An *Umpirage* is where there is but one Arbitrator; and is usually when the Parties submit themselves to the Arbitrament or Award of certain Persons, and if they cannot agree, or are not ready to deliver their Award in Writing before such a Time, then to the Judgment of another, as *Umpire*.

6. This is usually the Effect of the Submission, in which the *Umpire* is sometimes named by the Parties themselves, and at other Times the Arbitrators have Power to name him.

1 Salk. 70.

7. But herein observe, that if the Arbitrators are to chuse the *Umpire*, they must be careful that they do not chuse him before the Time allowed them to make their Award be expired, because of the Inconveniency of having two concurrent Jurisdictions.

2 Vent. 113.

1 Salk. 70.

8. And as it is doubted whether they can, when they have once executed their Authority by chusing an *Umpire*, revoke or chuse again, though the Person elect refuse to accept, it is the safest way to chuse their *Umpire* upon Condition that he does accept the *Umpirage*, for then he is not *Umpire* unless he accept it.

1 Rol. Abr.
542.

9. The Arbitrators cannot make an Award of Part, and the *Umpire* of the Residue, unless it is so expressly ordained by the Submission.

10. Sub-

The Compleat Arbitrator.

11

10. Submissions to an Award may be court- 8 Co. 82.
termanded, such Authorities in their own
Nature being revocable, though made irre-
vocable by exprefs Words.

11. But *note*, that if the Submission be by
Bond, if it be revoked, the Bond is forfeited;
such Revocation must be by Deed, with
Notice to the Arbitrators, though this will
not save the Forfeiture of the Bond.

12. If the Submission be by Rule of Court,
if either of the Parties revoke it, the Court
will grant an Attachment.

13. A Submission by *Word* may be revoked
without any Forfeiture, which is one of the
Inconveniencies which attends this Kind of
Submission; but it must be with Notice to
the Arbitrators, though such Notice need
not be in Writing, and it must be before the
Award made.

SECT. V.

The making and delibering the Award.

1. **A** *Rbitrament* is the Sentence or Decree
pronounced by the Arbitrators, and
published when they have heard all Parties;
but now as all Submissions are usually by
Bond conditionally, *so as the Award be made
in Writing, and ready to be delivered to the
Parties, or to such of them as shall require the
same*; the Parties so bound themselves are
obliged to take Notice of the Award at their
Peril, unless the Words of Submission are,
so

The Compleat Arbitrator.

5 Co. 78.

so that the Award be delivered to each Party by such a Day; for then it must be delivered to each Party accordingly.

2. But though the Words of the Submission may be such, as will oblige the Parties to take Notice of the Award at their Peril; yet if the Arbitrators award that one of the Parties shall do an Act, which depends upon another first to be done of the other Party, he must have Notice of it; at least the Party, who would take Advantage of it, must shew that he has done what was necessary on his Side.

3. I shall only in this Place consider these four Things following, which are chiefly necessary and essential to every good Award.

1. That the Award be made with respect to Persons and Things, according to the Submission. 2. That it be beneficial, and appoint something advantageous to each Party. 3. That it be possible and lawful. 4. That it be certain and final.

10 Co. 57.

4. And if these Things are observed, the Award shall be expounded according to the Intent of the Arbitrators, and not literally, and shall not be unravel'd in a Court of Equity, unless there was Corruption in the Arbitrators, &c.

1 Chan. Cafes
279.

5. 1st, That the Award, with respect to Persons and Things, be made according to the Submission; for in many Cafes, to award a Thing to be done by, or to a Stranger, is void.

10 Co. 151.

6. As to award that a Stranger shall enter into an Obligation, or to award that one of the Parties and a Stranger shall pay 10 l.

this

this Award as to the Stranger is void, though it is good as to the Party himself. 1 Rol. Abr. 244.

7. An Award that the Wife and Heir apparent (when they are not Parties to the Submission) shall make an Assurance of Lands, is void. 1 Rol. Abr. 248.

8. But it is a good Award, that the Party levy a Fine in the Court of Common Pleas, though there the Act of the Court is necessary; so likewise if the Party has any Remedy, either in Law or Equity, to compel the Stranger to perform the Thing awarded, it shall be good.

9. As if two are jointly bound in an Obligation, and one of them is awarded to pay the whole Money, and discharge the Bond, though there is an Act to be done by a Stranger, viz. the Delivering up the Bond, yet as he has a Remedy in Equity to compel him to it, the Award is good.

10. Sometimes to do a Thing to a Stranger is void, as to award that one of the Parties shall make an Estate for Life to the other, Remainder in Fee to a Stranger, it is void as to the Stranger. Cro. Eliz. 758.

11. But if it appear that the Party is to receive any Advantage by the Act that is to be done to the Stranger, it may be otherwise; as an Award that one of the Parties shall pay Money to the other Party's Servant, this is good. 1 Salk. 74. 1 Rol. Abr. 247.

12. So where the Stranger is used as an Instrument only, or is to do a ministerial Thing, it may be good; as an Award that one of the Parties shall make a Feoffment to J. S. who is a Stranger, to the Use of the other

other Party, or that they shall give mutual and effectual Releases, and such as Counsel shall approve.

13. It is resolved that the Arbitrators may award that one of the Parties beg the other's Pardon before such a Mayor, or such and such Persons: But if the Award be, that *A.* shall beg *B.*'s Pardon in such Manner, and in such Place, as *B.* shall appoint, it is not good; for though the Time and Place be but Circumstances, yet in this Sort of Satisfaction they make the most considerable Part.

1 Salk. 71.

14. As the Arbitrators are, with respect to the Things submitted, circumscribed and tied down to the Submission it self, so in several Cases it has been disputed, whether their awarding Releases to the Time of the Award, and not to the Time of the Submission, was good; it is therefore most advisable to award Releases to the Time of the Submission, though it is now clearly held, that general Releases shall extend only to the Time of the Submission, and that, if there be Releases awarded to the Time of the Award, they shall be good, unless it be shewn on the other Side that some new Matter had arisen between the Parties, between the Submission and Award.

1 Rol. Abr. 242.

6 Mod. 34.

1 Rol. Abr. 245.

15. If the Condition of the Submission be to stand to the Award of *J. S.* so that the Award be made, signed and delivered by the Arbitrators as their Deed, at or before such a Day, and the Arbitrators make an Award, which they Seal and Deliver, but omit to Sign, this Award will not be good.

16. And

16. And it is held to be necessary (if the Condition be as above) for the Arbitrators, if they cannot write, to set their Marks to the Award. Palm. 121.

17. 2dly, That it be Beneficial, and appoint something advantageous to either Party; 1 Rol. Abr. 252.
for an Award of one Side only, is not good; so if an Award be, that one of the Parties shall go to *Rome*, when it appears that there is no Advantage to the other Party by his going, it is void.

18. If *A.* and *B.* submit to the Award of *J. S.* who makes an Award, that *A.* shall be bound with such Sureties as *B.* shall approve, for the Payment of 100 *l.* to *B.* and that thereupon they seal mutual Releases to one another, this is a void Award; because *B.* must first approve of the Security before, and without which the Releases are not to be given; so that it is but an Award of one Side, because it is subject to be defeated at the Pleasure of *B.* 3 Mod. 272.

19. If an Award be made between *A.* and *B.* that *A.* shall pay to *B.* 10 *l.* and that *B.* shall pay for the making the Writings of the Award, this is a void Award, there being nothing awarded *B.* to do, but the making the Writings. Style 44.

20. 3dly, The Award must be of a Thing possible and lawful to be performed; for if the Arbitrators award that one shall go to *Rome* in an Hour, shall pay Money at a Day past, the Condition of the Obligation is saved: So if they award a Thing against Law, as to kill *J. S.* or that an Infant shall make a Release, which he cannot do by Law, &c. 1 Rol. Abr. 248. 1 Jones 164.

21. Nay,

2 Mod. 27.

21. Nay, it is said, that in some Cases, when the Thing to be performed becomes impossible, though after the Award made, it shall excuse the Party.

4thly, The Award ought to be certain and final, so that it may make an end of the Controversy.

2 Brownl.
311.

22. And if the Arbitrators award a Thing to be done, it is proper for them to appoint a Time and Place for the doing of it; as such a Day and Hour, at such a Tavern or Coffee-house; and the Party, who would take Advantage of it, must shew that he has done what was requisite on his Part; but if a Thing is to be done generally, without mentioning Time or Place, it shall be done immediately.

Skin. 248.

23. An Award that one shall pay so much as such Lands are worth, is not good.

Style 28.

24. So an Award that one shall pay to the other as much as is due in Conscience, is not good.

1 Salk. 75.

25. But in some Cases, though the Thing be not certain in it self, yet if it be such a Thing as may be reduced to a Certainty, it may be good; as an Award that one of the Parties shall pay such Costs of a Suit as a Master shall Tax, is good.

Cro. Car.
383.

26. If there be a Submission of all Controversies touching a Voyage to Sea, and an Obligation with Condition for Performance thereof, and an Award is made that one shall pay his Part of the Charge of the Voyage, and shall allow his proportionable Part of the Loss that shall come to the Ship by the Voyage, upon Account, though this Award be of it

it self uncertain, yet in as much as it may be reduced to a Certainty, it is good.

C H A P. II.

Matters in Controversy
Which may, or may not,
be submitted to Arbitra-
ment.

1. **A**S all Matters of Controversy are generally at this Time submitted to Arbitrament, by the Parties entring into mutual Obligations to perform the Award, it may not be thought necessary to enter too minutely into a Disquisition of the several Matters, concerning which the Arbitrators can make no Award that will bind the Parties, unless they enter into Bonds of Submission, or consent to have their Submission made a Rule of Court, pursuant to the * Statute of 9 & 10 Will. and Mary.

* Vide the
Statute, Cap.
VIII.

2. Notwithstanding this I say is the general Practice, yet as an Award made of several Things at this Day may be good, though submitted to by *Parol*, or without Writing; and as the Statute only enacts, *That all Submissions made a Rule of Court, shall be of such Matters for which there is no other Remedy, but by Personal Action or Suit in Equity, &c.* — I shall shew what Distinctions the Law

C

has

The Compleat Arbitrator.

has made concerning these Matters with respect to Things Real, as Lands and Tenements; Things Personal, as Debts due by Bills, Bonds or Records, &c.

3. But *Note*, That regularly all Matters whatsoever, to which the Parties have by Bond submitted, (except Criminal Offences and Matrimonial Causes) they are obliged to perform the Award made relating to them, otherwise they are liable to be sued on their Bonds; provided the Award be made in such Manner as the Law requires.

Sect. I. Matters in Controversy, which may be submitted to Arbitrament, either by Word or by Writing.

Sect. II. Matters in Controversy, which cannot be submitted otherwise than by Writing.

Sect. III. Concerning Matters of Freehold, which cannot regularly be submitted but by Bond.

Sect. IV. Concerning Things certain, as Debts due by Contract, Bond, or Record.

Sect. V. Concerning Criminal Offences, which cannot be submitted.

Sect.

Sect. VI. Concerning Marriage, or any Contract relating thereunto, which cannot be submitted.

Sect. VII. Things not in Being at the Time of the Submission, tho' they happen before the Award be made.

S E C T. I.

Matters of Controversy, which may be submitted to Arbitrament, either by Word or by Writing.

1. **I**T is held clearly, that all Actions Personal and uncertain, such as Trespass, Conspiracy, and Maintenance, are proper Matters for Submission, and that an Award made concerning them will be good, though neither the Submission nor the Award be in Writing. 22 H. 6. 39. 9 Co. *Peytoe's Case*, 78.

2. It is held likewise, that if upon such Parol Submission the Arbitrators award the Party a Sum certain, he may bring an Action of Debt for it; but if they award the doing of some other Thing, which is Beneficial to him, he must bring his Action on the Case. 1 *Keb.* 600.

3. In an Appeal of Mayhem, an Attaint, in Waste, against Tenant for Life or Years in the *Tenuit*, the Arbitrators may make an Award. 6 Co. 44. 1 *Rol. Abr.* 266.

The Compleat Arbitrator.

4. They may make an Award in Mayhem, though the Writ be *Felonice*, and in Attaint, because the Attaint is not founded barely on the Record, but also on the supposed false Oath, which is Matter of Fact, 13 E. 4. 1. But, whether they can make an Award in WASTE against Tenant for Life or Years, in the *Tenet*, because it favours of the Realty, *Quære*, & *Vide* 9 Co. 78. a. *Cro. Jac.* 100.

5. Arbitrators may make an Award of the Arrears of Rent, reserved on a Lease for Years. 4 H. 6. 17. b. 1 *Roll. Abr.* 264.

6. An Action of Account may be submitted to Arbitrament, for it is a Thing uncertain; but the Arrearages of an Account found before Auditors, cannot be submitted. 4 H. 6. 17.

7. In an Action of Debt for 20 l. Rent Arrear, upon a Lease for Years, an Award of 10 l. for this Debt and other Trespasses, is a good Bar of the Action, though it is a less Sum than the Debt demanded, and tho' the Action is for a Debt certain, in as much as other Things are submitted with this, and so altogether are uncertain, and it may be the Sum of 20 l. was abridged to 10 l. in respect of a Trespass done by the Plaintiff to the Defendant, 10 H. 7. 4. *All.* 52.

9. If there be a Submission of all Debts, the Arbitrators may award a Release of all Bonds, Judgments, Executions and Extents; for, as by the Submission the Arbitrators have Power to make an Award concerning the Debts themselves, so by Consequence they have Power to award a Release of the Specialties,

cialties, Judgments, &c. by which the said Debts are due. Adjudged *Trin. 22 Car. 2.* between *Roberts* and *Marriot*, 2 *Saund.* 190.

10. In Debt upon a Bond by three Executors, the Defendant pleaded that there were several Controversies between the Defendant and one of the Plaintiffs; upon which they submitted to the Award, &c. who awarded that the Defendant should be quit of the Bond; and it was held by the Court, that a Bond of it self, because a Debt certain, cannot be submitted; otherwise, if it were submitted among other Things; and by two Judges the Plea is good, though the Controversy were between the Defendant and one of the Plaintiffs only. *Moreton* doubted. *Trin. 22 Car. 2.* between *Morris* and *Creech*, 1 *Lew.* 292.

Note, That though in the above Cases, a Submission by Parol was good, and the Party, in whose Favour the Award was made, had a Remedy to enforce a Performance of it; yet it was never expedient that any Submission should be by *Parol*, because the Party could have revoked it at Pleasure, at any Time before the Award made, and that by Parol likewise; but it is much less so now, because the Judges will rarely enforce the Performance of an Award, when either the Submission or the Award is by *Parol*, because it lays so great a Foundation for Perjury.

S E C T. II.

Matters in Controversy, which cannot be submitted otherwise than by Writing.

1. **A**LL Matters of Freehold, or any Right and Title to a Freehold, cannot be submitted to Arbitrament, though the Submission be in Writing, and by Deed, or by Deed Indented; and the Reason is, That being of so high a Nature, no collateral Satisfaction will be a Bar to a real Action, and it requiring such Solemnity, as that it is not transferable from one to another, without Livery and Seisin. 1 *Roll. Abr.* 244. 4 *Co.* 1. a.

2. Yet if there be a Submission concerning the Right, Title, or Possession of Lands or Tenements, and the Parties enter into mutual Bonds, to stand to the Award made relating to them, they forfeit their Bonds unless they obey it.

3. Things certain, as a Sum of Money, Debts due by Deed or Record, cannot be submitted otherwise than by Writing; and the Parties must, as in the above Case of Freeholds, enter into Bonds of Submission, unless they elect to have their Submission made a Rule of one of his Majesty's Courts of *Westminster*; which in this latter Case will regularly be good to bind them, though not so in the former, by the express Words of the Act of Parliament.

S E C T.

S E C T. III.

Concerning Matters of Freehold,
which cannot regularly be sub-
mitted otherwise than by Bond.

1. **I**T is exprefly refolved, That Arbitra-
tors cannot make an Award of a Free-
hold, fo as to adjudge the Land of one to
another. 14 H. 6. Keil. 99.

2. A Partition cannot be made by Award,
for a Freehold cannot Pafs without Livery
and Seifin. Adjudged between *Horton* and
Horton, 1 Rol. Abr. 242.

3. An Arbitrator cannot make an Award
of a Lease for Years of Land, fo as to ad-
judge the Land of one to another, by which
the Intereft and Eftate of one fhall be trans-
ferred to the other, becaufe this is a Chattel
real. 1 Rol. Abr. 242. 146.

4. My Lord Chief Juftice Roll fays, That 9 Co. 78.
this feems to be admitted by *Peytoe's* Cafe;
and founds his Reason on the Authority of
that Cafe, viz. That an Award is no good
Plea in an *Ejectione Firme*. But the Refolution
is quite contrary; for the Queftion there be-
ing, Whether Accord with Satisfaction was
a good Plea in an *Ejectione Firme*? It was
refolved, That this Action being not only to
recover the Term, but likewise Damages, it
was a good Plea: It being therefore a cer-
tain Rule, that an Award may be plead-
ed where Accord with Satisfaction may.

The Compleat Arbitrator

Quære whether it is not rather an Authority that such Submission may be good.

5. In Actions mixed, in which the Land (of an Estate of Freehold, as it seems) shall be recovered, an Award is no Plea; therefore such mixed Actions cannot properly be submitted. 1 H. 6. 37.

6. The Detaining a Charter of Feoffment, as it relates to a real Thing, cannot be submitted. 9 H. 6. 60. But an Action of Trespass for taking the Charter may be submitted, for Damages only can be recovered for such Taking. *Ibidem.*

S E C T. IV.

Concerning Things certain, as Debts due by Bill, Bond or Record.

1. **I**T appears by all our Books, that neither Arbitrament, nor Accord with Satisfaction, are good Pleas in Bar, when the Action is grounded on a Deed. 1 H. 7. 16. b. *Dyer* 51.

2. For when a Duty accrues by the Deed in Certainty *Tempore confectiois Scripti*, as by Covenant, Bill, or Bond to pay a Sum of Money, there this certain Duty takes its Essence and Operation originally and solely by the Writing; and therefore it ought to be avoided by Matter of as high a Nature, although the Duty be merely in the Personality. *Nihil tam conveniens est naturali Equitati*

tati unumquodque Dissolvi eo Ligamine quo Ligatum est. 6 Co. *Blake's Case*, 43, 44.

3. But when no certain Duty accrues by the Deed; but a Wrong or Default subsequent, together with the Deed, gives an Action to recover Damages, which are only in the Personality, for such Wrong or Default an Award is a good Plea. And *Note*, That the principal Point in *Blake's Case* was an Action of Covenant for not repairing a House, and it was there held, That this being a subsequent Default an Award is a good Plea. 6 Co. 43. *Cro. Jac.* 99. S. C.

4. In an Obligation upon Condition to pay a certain Sum, in which the Duty commences originally, and only by the Deed, and likewise in an Action of Covenant for Non-payment of a certain Sum of Money which he covenanted to pay; an Award, or Accord with Satisfaction, is no good Plea. 6 Co. 43. Vide the Statute 3 and 4 Ann. Ch. 16.

5. If *A.* is indebted to *B.* in 20 l. by single Bill, and they submit all Matters between them to the Award of *J. S.* who awards that *A.* shall pay a certain Sum, *scilicet* a lesser Sum to *B.* in Satisfaction of the said Bill, though if he pays the Money according to the Award, yet this cannot be any Bar in an Action brought on the said Bill, because the Action is grounded on a Deed; yet if each of them was bound to perform the Award, he ought to pay the Money, otherwise he forfeits his Obligation. Between *Lumly* and *Hutton*, adjudged upon Demurrer, 15 *Jac.* 1. *Cro. Jac.* 447.

6. If

The Compleat Arbitrator.

6. If two submit a certain Debt in Controversy between them, the Arbitrators cannot make any Award thereof, because it was certain before the Submission. 1 *Rep. Abr.* 264.

7. But if one claims 5 *l.* expended for the other *pro diversis negotiis*, an Award made thereof will be good; for though a Debt upon a Bill or Contract cannot of it self be put in Arbitrament, yet this may, being claimed as Expences laid out for several Necessaries. *Cro. Eliz.* 422.

8. Debt upon a Bond for Performance of an Award, in which the Arbitrators had taken Notice of 72 *l.* in Controversy, and had awarded 50 *l.* in Satisfaction; the Defendant pleads *Nullum fecerunt Arbitrium*; the Plaintiff replies an Award, and sets it forth, and assigns a Breach, to which the Defendant demurred, because it appeared by the Award, that 72 *l.* was in Controversy for Rent due, and that 50 *l.* was awarded in full Satisfaction of 72 *l.* and general Releases to be given; but it did not appear that any other Matters were in Controversy between the Parties, though the Submission was general; and it was insisted upon, that though the Arbitrators could reduce Things incertain to a Certainty, yet they could not make a Debt certain to be less. But the whole Court were of Opinion that the Award was good, for that the Arbitrators may consider other Matters between the Parties; neither did it appear by the Award that the 72 *l.* was due, but in Demand only, and 'tis unreasonable for him to find fault with his
own

own Case; for he alledges, that he ought to pay 72 *l.* and complains that the other Party is contented with 50 *l.* and demands no more. Between *Godfrey* and *Godfrey*, 2 *Mod.* 303, 304.

9. Debt upon an Obligation for eighty Pounds, conditioned for the Performance of divers Covenants, contained in Articles of Agreement; the Defendant pleaded, That it was agreed between the Plaintiff and Defendant, that he should grant an Annuity of 5 *l.* out of such Land for Life, in Discharge of the Bond; and it was held without Argument, that this Concord and Verbal Agreement could never discharge a Specialty. Between *Ball* and *Wheeler*, *Cro. Jac.* 647.

10. In an Annuity for an Annuity in Fee or for Life, an Award is no Plea. This, says my Lord *Roll*, must be intended of an Annuity by Prescription; for if it be by Deed, it is no good Plea against the Deed. 1 *Rol. Abr.* 266.

11. Matters grounded upon a Record or Statute cannot be submitted. 6 *H. 4.* 6. *a.*

12. In an Action of Debt for the Arrears of an Account before Auditors assigned of Record, an Award is no Plea. 1 *Rol. Abr.* 265.

13. But in an Action upon the Statute of Labourers, an Award is a good Plea in Bar; for the Action is not merely founded on the Statute, but partly on a Matter in *Pais*, *scilicet* his Departure. 1 *Rol. Abr.* 265.

S E C T. V.

Concerning criminal Offences,
which cannot be submitted.

1. **M**atters Criminal, such as Treasons, Murders, Felonies of all Kind, cannot be submitted to Arbitrament; for it is for the Good of the Commonwealth, that such Offenders be made known and punished. *West. Symb. Part 2. Sect. 33.*

2. And tho' the Submission be by Bond, yet the Award made relating to them will be void, and consequently the Bond of Submission likewise; and *quære* if it is not punishable to enter into such Bonds, & *vide* 2 Vent. 109.

3. Perjury, Forgery, Assaults and Battery, or any other Offence indictable at the Suit of the King, come within this Rule, and cannot be submitted to Arbitrament: But if the Party injured proceeds by Way of Action, as he may in Assaults and Batteries, Libels, &c. the Damages he sustained, or he expects to recover, may be submitted to Arbitration.

S E C T.

S E C T. VI.

Matrimony, or any Contract relating thereunto, which cannot be submitted.

1. **C**Auses matrimonial cannot be submitted to Arbitrament, *West Symb. Part 2. Sect. 33.* for as the Law discountenances and abhors all Restraints on Marriage on the one Hand, so on the other it makes void all Contracts not freely and without Compulsion entered into; and will make void any Bond, compelling one Person to marry another, when it is so agreeable to the Laws of Reason and the Laws of God, that Marriage should proceed from a free Choice.

2. If a Man and a Woman submit themselves to an Award, it is no good Award that they shall intermarry, for this is not intended any Advantage. *1 Rol. Abr. 252.*

3. But the Damages a Person sustained by a Promise of Marriage, or any Thing relating to a Marriage Portion, may be submitted. *16 E. 4. 2.*

S E C T. VII.

Things not in Being, altho' they happen before the Award be made, cannot be submitted.

1. **I**F the Submission be of Ewes with Lamb, which after the Submission, but before the Award made, happen to have Lambs;

The Compleat Arbitrator.

Lambs; the Arbitrators have no Power to make an Award touching the Lambs. *West. Symb. Part 2. Sect. 33.*

2. If the Submission be of a Term for Years of Land, and all thereupon depending; and the Award is, that one shall pay to the other 10*l.* for the Rent that shall become due upon this Term at *Michaelmas* next ensuing; in as much as the Rent may be extinct by Surrender, Eviction, &c. before *Michaelmas*, the Award made thereof is void. Between *Gray* and *Wicker*, adjudged 1 *Roll. Abr.* 245.

3. Whether Interest accruing after the Submission, may be awarded for Money due before, *quare*, and see *Winch* 114, 120.

4. If there be a Controversy between the Parson and Parishioners, whether Tithes should be paid in *Specie*, and they reciting the said Controversy, submit themselves to the Award of *J. S.* for all Matters, as well Spiritual as Temporal, from the Beginning of the World to the present Day; and the Arbitrator awards, that the Parson shall have 7*l.* for the Tithes due before the Submission, and that the Parishioners shall pay 4*l.* per *Ann.* for the Tithes which shall grow due after, this is a good Award for the Tithes which shall grow due after the Award; for the Right of the Tithes was in Question, and not the Possession. Between *Beckingham* and *Hunter*, 42 *Eliz.* 1 *Roll. Abr.* 246.

5. If the Condition of an Obligation be to stand to the Award of *J. S.* and he awards that one shall enjoy a certain House, paying

paying to the other 20 s. yearly, if the Rent is not paid, the Condition is broke, for this is a good Award. Between *Parsons* and *Frowd*, *Cro. Eliz.* 211.

6. If an Award be, that *A.* shall make a Lease to *B.* and that for this Lease *B.* shall pay to *A.* a certain Sum yearly, this is a good Award. *Moor* 3. *Pl.* 8.

7. If Two submit to the Award of *J. S.* of all Matters between them till the Submission, and then each of them promises the other to perform the Award, and *J. S.* afterwards awards; whereas one was bound in an Obligation to the other (which was made after the Submission, but before the Award) that the Obligee should deliver up the Obligation to the other, in full Satisfaction of all Matters between them; and awards farther, that all was good, if this Obligation was good; though this Obligation is out of the Submission, because it was made after the Submission, yet he is bound to perform it, because it is to be given in Satisfaction of Things contained within the Submission; as a Horse or Money may be given in Satisfaction, tho' they are not within the Submission. Between *Nicklas* and *Thomas*, *Trin.* 15 *Jac.* 1. 1 *Roll. Abr.* 243. (But the Reporter makes a *Quere* of it.) For this is a Thing in Action between them, and out of the Submission.

C H A P. III.

The Submission.

THE *Submission* is a Power given the Arbitrators, by the Parties between whom any Controversy subsists, to decide and determine their Differences and Disputes, and to pronounce Sentence between them, according to Reason and good Conscience, though in a private and extrajudicial Manner. And this their Sentence the Law obliges the Parties to obey, provided it be made in such Manner as the Law requires.

As there have been various Resolutions concerning the Making and Validity of the *Submission*, and as the Construction thereof has occasioned some Contention; and as there are divers Kinds of Submissions, it will be necessary in this Chapter to shew:

Sect. I. Concerning the Making the Submission.

Sect. II. Concerning the Construction which has been made of the Submission.

Sect. III. Concerning those Matters which may be said to be submitted.

Sect. IV.

Sect. IV. Concerning those Submissions which may be said to be General or Special, Absolute or Conditional.

Sect. V. Concerning Submissions by Bond, Covenant, Rule of Court, by Parol, or without Writing.

S E C T. I.

Concerning the Making the Submission.

1. **S**ubmissions in former Days were most frequently made by People's Consenting by Word, or verbal Declaration, to stand to the Award of such and such Persons; and such Submissions in those Days were thought most * convenient, because they did not run the Parties into any Hazard of a Forfeiture; and as they were revocable at Pleasure, without any Inconveniency, sometimes they submitted by Deed Poll or indented, with Covenants to perform the Award.

* West.Symb.
Part 2.
Sect. 38.

2. But now the Method is quite otherwise, and there are rarely any Awards made, but upon Submissions entered into by Consent in Writing, which Consent has been made a Rule of Court, or by Bonds, conditionally to perform the Award.

3. And these two last, as they are mostly used, so undoubtedly they by far excel the
D others,

others; the one giving the Party, who was to gain any Thing by the Award, a more sure and expeditious Remedy for the Recovery of it; and the other not only ascertaining the Matters submitted, but likewise giving the Party a Power to sue on the Bond.

4. Sometimes the Submission is both by Bond and by Rule of Court; and this is still the best Way; for it is said that you may proceed on the Bond, and likewise have an Attachment for Non-performance of the Award. *Vide 1 Salk. 73.*

5. Undoubtedly a Submission by Bond, in some Respects, exceeds a Submission by Rule of Court; for an Award made pursuant to Bonds of Submission, may bind the Parties Executors; but if the Party, who refuses to perform an Award made pursuant to a Rule of Court, dies, the Act of Parliament directing that the Prosecution should be carried on by *Attachment*, the Remedy being lost, the Award is lost likewise.

6. Each of the Parties submitting by Bond must perfect one to the other, which Bonds must contain exactly the same Words, only changing the Names of the Persons; and as it is usual, so it is highly convenient, to mention in the Condition, *That the Award be in Writing, to be made at or before such a Time, ready to be delivered to the Parties, or to such of them as shall require it, &c.* See afterwards. *Chap. 6. Sect. 3.*

7. In an Action upon the Case, on a Promise to perform an Award on a Submission to A. and B. *when their Occasion will permit; Kelynge, Twisden and Moreton held, that only*

ly a convenient Time was to be given at least after Request; but *Windham* held, that they had Time during their Lives, and that it was the same Thing, as if it had been to be made at their Wills and Pleasure; but they all agreed, that if it was to be made generally, without any Time limited, the Law implieth it must be done in convenient Time; and that, tho' the Submission be when their Conveniencies permit, yet after Request, or convenient Notice, the Party may revoke on the Neglect of the Arbitrators. 2 *Keb.* p. 10. 1 *Sid.* 281. S. C.

Note; As there may be several Parties to the Submission, so their several and distinct Bonds will be good, as in the following Case.

8. If there be a Controversy concerning certain Lands between *A. B.* and *C.* and thereupon *A.* of the one Part, and *B.* and *C.* of the other Part, submit to the Award of *J. S.* and thereupon *A.* binds himself in an Obligation of 1000 *l.* to *B.* and *C.* with Condition to perform the said Award of *J. S.* touching this; and *B.* and *C.* because they would not be bound the one for the other, enter into several Obligations of 1000 *l.* a-piece to *A.* with several Conditions for the Performance of the Award of the said *J. S.* and the Arbitrator awards that *A.* shall make a Release of all his Right in the Land to *B.* and *C.* and in Consideration thereof *B.* and *C.* should pay 300 *l.* to *A.* in an Action of Debt by *A.* against *B.* upon his Obligation for the Non-performance of the Award; this is a good Award, and Breach assigned, that *nec B. nec C.* paid the 300 *l.* at the

D 2

Time

Time appointed, according to the Award; all this Matter being disclosed in Pleading; for, upon all the Matter shewn, it appears that C. is no Stranger to the Award, for he and B. submitted themselves jointly; and tho' they entered into several Obligations, yet this did not make C. any Stranger to the Award. Between *Haies* and *Haies*, adjudged upon a Demurrer, *Cro. Car.* 433.

S E C T. II.

Concerning the Construction which has been made of the Submission.

1. **A**S the Condition of the Bond of Submission usually recites the Matters in Difference in the most general and strong Terms, as *all Matters, Suits, Debts, Duties, Actions, and Demands whatsoever*, there are not many Cases to be found in our Books, relating to this Part of the Submission, or concerning the Force and Signification of these Words: These that follow are the most considerable, and all that I think can be met with pertinent to this Section.

2. If the Submission be of all Actions only, the Arbitrators cannot make an Award of such Things of which the Parties have Cause of Action. *1 Inst.* 285.

3. By the Submission of all Demands, all Matters concerning the Title of Land is submitted. *Kelw.* 99.

4. If the Submission be of all Actions and Quarrels, the Arbitrators cannot make an
Award

Award of Lands or Tenements. 36 H. 6.

11. *b.* Upon a Submission of all Differences, whether the Arbitrators may award a Release of all Demands, *vide Stil.* 170. Upon a Submission of all Injuries, *vide 3 Bulst.* 311.

5. If a Submission be of all Actions Personal, *Sectis & Querelis*, the Arbitrator cannot make an Award of any Suit, Action or Quarrel which is Real, but only of such as are Personal; for the Word Personal refers to all which comes after in the Copulative; but if the Submission had been of all Actions Personal *ac Sectis & Querelis*, the Arbitrator might have made an Award of Things Real, for the Word *Ac* disjoins them. 9 E. 4. 43. *b.* 44. *a.*

6. If *A.* and *B.* submit themselves to the Award of *J. S.* touching a Suit depending between them in an *Ejectione firmæ*, *J. S.* upon this Submission cannot make an Award of the Land for which the Action is brought: Adjudged in Arrest of Judgment, in an Action upon the Case for Non-performance of this Award, after a Verdict for the Plaintiff. Between *Taylor* and *Waltam*, 1 Rol. Abr. 247.

7. But though there have not been many Cases on the above-mentioned Part of the Submission, yet there have been various as well as some contradictory Resolutions on the Construction of other Parts of the Submission; some of which I shall mention here; the others will come more properly under the Chapter of Awards, in those different Sections, which teach us for what Cause Awards have been held void.

The Compleat Arbitrator.

8. If a Submission be to the Award of certain Arbitrators, and if they cannot agree, or are not ready to deliver their Award in Writing before the 1st of *May*, then the Submission is made to *J. S.* to be the Umpire, to be made before a certain Day after; if the Arbitrators do not treat of the Matter, so that there is no Disagreement between them; yet if they do not make any Award before the Day, the Umpire may make an Award upon this Submission; for the Words, *And if they cannot agree*, are not to be taken literally, but as if they had been, *If they do not agree upon any Award.* 1 *Roll. Abr.* 261.

9. If a Submission be to stand to the Award of certain Arbitrators, and that if they disagree, then to the Umpirage of *J. S. ita quod* the Award or Umpirage are made before the 1st of *May*; in this Case the Umpire cannot make any Award till a Disagreement made by the Arbitrators, and the Arbitrators have Time to make their Award at any Time before the said Day; and so no Time limited for the Umpire, and his Power therefore merely void. Between *Barber and Giles*, 1 *Roll. Abr.* 261.

10. If the Condition of an Obligation be to submit to the Award of *A.* and *B. ita quod*, &c. *ante 1 May*, and if they made none, to the Award of such Umpire as they should chuse, to be made before the 1st of *June*, tho' the *Ita quod*, &c. be in the Clause referring to the Arbitrators, yet by Construction it relates to, and as well restrains the Umpire as Arbitrators. Between *Bean and Newbury*, 1 *Lev.* 139.

11. If

11. If two Men submit themselves for all Matters, &c. to the Award of certain Arbitrators to be made before a certain Day; and that if they do not make any Award before the Day, that then they submit to the Ordinance and Judgment of 7. S. if the Arbitrators make an Award of Part of the Things submitted, and of Part not, the Umpire cannot make any Award of this Part of which the Arbitrators have made no Award, because he hath no Power given, but upon Condition the Arbitrators make no Award. 39 H. 6. 10.

12. But if the Submission be, that if the Arbitrators make no Award of the Premisses, or of any Parcel thereof, that then the Umpire shall have Power to make an intire Award, or of Parcel which remains, as the Case is; in this Case the Arbitrators may make an Award of Parcel, and the Umpire of the Residue, because this is expressly ordained. 39 H. 6. 11.

13. If the Condition of an Obligation be, to stand to the Award of A. B. C. and D. *Ita quod* the said Award before such a Day be made in Writing by the said A. B. C. and D. or any Two of them, under their Hands, &c. any Two of the Arbitrators without the rest may make an Award; for tho' by the first Part they are bound to stand to the Award of those Four, yet their Power is divided by the subsequent Words, and the *Ita quod*, &c. is but an Explanation of the Condition, and the Whole makes but one Sentence. Between *Sallows* and *Girling*, *Telw.*

203. adjudged upon Demurrer.

Unani

D 4

14. If

The Compleat Arbitrator

14. If, upon a Submission of all *Title* in a certain Lease, the Arbitrator awards that one of the Parties shall have the Land, this gives the Interest in the Term; but if the Award be, that one shall permit and suffer the other to enjoy the Term, this gives not the Interest in it. Between *Trusloe* and *Tewre*, *Cro. Eliz.* 228.

S E C T. III.

Concerning those Matters which may be said to be submitted.

1. **A**S it is by the Submission, that the Arbitrators are armed to pronounce a Sentence between the contending Parties, it is necessary for them to examine particularly what their Authority is, and how far it extends, to square themselves by the Terms thereof, and to see carefully that their Award be conformable to the Submission, with Respect to Persons and Things; for to award a Thing to be done *by* a Stranger, and sometimes *to* a Stranger, who is not Party to the Submission; or to make an Award upon another Thing that is not submitted, is void.

2. As it is the Neglect of this Rule which has caused more Strife and Debate with respect to Awards, (when the discontented Party had no Mind to perform what was to have been done on his Side) than any other; and as there are more curious and artful Distinctions on this Head than any other, it requires the nicest and strictest Examination;

tion; but as I have endeavoured to set all the Cases on this Subject in the clearest Light I could, in the Chapter of Awards, I shall mention but a few in this Place.

3. If the Condition of an Obligation be, to perform an Award between the Parties of such and such Things; if the Arbitrator award a Thing to be done merely out of the Submission, he is not bound to perform it. 8 H. 6. 18.

4. But otherwise it is of a Thing depending on the Principle. 8 H. 6. 18.

5. As, if there be a Submission of all Debts, the Arbitrators may award a Release of all Bonds, Judgments, Executions and Extents; for as by the Submission the Arbitrators have Power to make an Award concerning the Debts themselves; so *ex consequenti* they have Power to award a Release of the Specialties, Judgments, &c. by which the said Debts are due. *Trin. 22 Car. between Roberts and Marriot, 2 Saund. 190. adjudged.*

6. If Two submit to the Award of 7. S. of all Matters between them till the Submission, and then each of them Promises to the other to perform the Award, and 7. S. after awards; whereas one was bound in an Obligation to the other (which was made after the Submission, but before the Award) that the Obligee should deliver up the Obligation, in full Satisfaction of all Matters between them, (and awards further in such Manner, that all was good, if the aforesaid Award was good) though this Obligation be out of the Submission, because it was made after

The Compleat Arbitrator.

after the Submission, yet he is bound to perform it, because it is to be given in Satisfaction of Matters contained within the Submission. 1 *Rol. Abr.* 243.

7. If the Submission be of a Term for Years of Land, and all thereupon depending; and the Award is that one shall pay the other 10*l.* for the Rent that shall become due upon this Term at *Michaelmas* next ensuing; this is no good Award; for the Rent is not within the Submission, in as much as the Rent may be extinct by Surrender, Eviction, &c. before *Michaelmas*. 1 *Rol. Abr.* 245.

8. But if the Condition of an Obligation be, to stand to the Award of *J. S.* and he Awards that one shall enjoy a certain House, paying to the other 20*l.* yearly, if the Rent is not paid the Condition is broke. *Co. Eliz.* 211.

9. So if an Award be that *A.* shall make a Lease to *B.* and that for this Lease *B.* shall pay to *A.* a certain Sum yearly, this is good. *Moor* 3.

10. Whether Interest accruing after the Submission, may be awarded for Money due before, *quære*, and see *Winch* 114, 120.

S E C T.

S E C T. IV.

Concerning those Submissions
which are said to be General or
Special, Absolute or Conditional.

1. **A** Nother Thing to be observed concerning the Submission is, That it is sometimes *General*, as of all Suits, Debts, Dues, Demands, &c. whatsoever; or *Special*, as of a particular Thing, as of such a Sum of Money, such an Action depending, &c. and this has occasioned another Division, viz. such as are *Absolute* or *Conditional*; and this last has given Rise to several Doubts and Disputes. When the Submission is absolute, and of several Differences and Disputes, the Arbitrators may make an Award of one or two, omitting the Rest; and the Award will be good for so much as they settle.

2. But when the Submission is conditional, viz. when it is of all Things in General, or of two or three Things in Particular, and it concludes, so that the Award be made of the (or of all the) Premisses, there it is necessary in many Cases to settle and determine the whole Matters submitted.

3. In Debt upon an Obligation conditioned to stand to the Award of J. S. for and concerning seven several Things, so as the same Award be made, and delivered, in Writing before such a Day, &c. the Defendant pleaded, that the Arbitrator made an Award of some Things according to the Submission,
and

and of others not, &c. to which the Plaintiff demurred, because he had not pleaded Performance of such Things as were well awarded; but all the Court held, that as this Case is, the Defendant is not tied to perform any Part of the Award; for it is all one, where the Words are, *so that that Award be made of the Premisses, &c.* and *so as the same Award be made before, &c.* for the Words *the same Award* refer to all the Things before-mentioned; so that if any Part be omitted in the Award, it is void for all. Between *Risden and Inglet, Cro. Eliz. 838, 839.*

4. In Debt on an Obligation for not performing an Award, it appeared that the Submission was general, with a Condition *ita quod*; and it was objected, that the Arbitrator having made an Award of one Thing only, the Award was void; but it was held, that it appearing by the Award, that it was made *de præmissis præd.*, &c. which Words import, that he had made an Award of all that was referred to him, and so shall it be intended, unless the contrary be alledged and shewn by the Party, that the Award was good; but if the Submission be of certain Things specially mentioned, with a Condition that the Award shall be made of the Premisses, then the Arbitrator must make an Award of the Whole; otherwise it is void; but if divers Things be submitted without any such conditional Conclusion, the Award shall be good, though made but of one or of two of them. *Baspole's Case, 8 Co.*

8 Co. 97. b. 98. a. same Point, and same Difference taken, Cro. Jac. 200.

5. If *A.* and *B.* submit all Controversies of Woods and Underwoods, and all Quarrels and Suits between them, *ita quod*, and the Award is, that *A.* shall have the Underwoods, and that he shall pay to *B.* 50*l.* and says nothing of the Woods, but awards further, that all Manner of Actions, Quarrels, &c. between them shall cease; this is a good Award of all, because the Beginning of the Award was (*we do award of the Premises*); and also the Award is of Actions, &c. Between *Humfrey* and *Wiburn*, 1 Rol. Abr. 257.

6. If there be a general Submission, with a conditional Conclusion, and in an *Assumpsit* brought for not Performing the Award made thereon, the Defendant pleads, that there was 4*l.* due to him, which he offered to prove to the Arbitrator; but that the Arbitrator refused to take any Notice of it, or allow him any Thing in Recompence, but proceeded to make his Award, and thereby awarded general Releases of all Matters; yet this shall be a good Award; for he having awarded general Releases of all Matters, shews that he had all the Matters in Difference in Contemplation, and that he did not deem this a just Debt. Between *Birks* and *Trippet*, 1 Saund. 32.

7. Agreed to be a stated Rule in Awards that are said to be *de & sup' Præmiss.* that if the Words used in them be in their own Nature more comprehensive, and so extensive to Things not within the Submission; yet

yet it shall be intended that there was no other Matter between the Parties, for them to lay hold on, but what was submitted, if the contrary be not shewn. So *e converso*, if the Words are more narrow, and less comprehensive than to take in all the Matter of Submission; yet it shall be intended that no more was in Controversy, than what the Words naturally comprehend, if the contrary be not likewise shewn. 6 *Mod.* 232.

S E C T. V.

Concerning Submissions by Bond, Covenant, Rule of Court, by Parol, or without Writing.

1. **A** Submission by Bond, as it is the most frequent, so it is the most sure Method, as has been before observed; it is adviseable that the Penalty of the Obligation be somewhat more than the Thing in Controversy is worth: Each Party must deliver a Bond to the other, *Mutatis mutandis*, only changing the Names; and if there are more than one of a Side, who are so far interested as to make it necessary that they should be Parties, they may enter into separate and distinct Bonds, or they may be bound jointly in the same Bond.

2. Submissions by Covenant are but rarely used; but as an Award made on such a Submission may be good, it is necessary that the Covenants be equally binding, that they express the Time, Place, &c. as much as a Sub-

Submission by Bond, and that there be likewise a Covenant, that neither of the Parties revoke the Authority they have given before the Award be made.

3. Submissions by Rule of Court are now very frequent, and is allowed to be the most expeditious Way they may be made, by adding the Party's Consent at the Bottom of the Condition of the Bond, and then the Party may proceed which ever Way he pleases, or the Submission may be made by a *Memorandum* in Writing, signifying their Consent, according to the following Precedents.

4. Submissions by *Word* are seldom used, because of the great Inconveniency which attends such Submissions, not only in Respect to their Incertainty, which may be the Foundation of Perjury; but likewise, as they may be revoked at any Time before the Award made, without any Inconveniency; but however, as Persons may submit by Parol, and as they still do, when the Controversy is of some small Matter, it is as necessary for the Parties to ascertain the Matters, and all other the Circumstances, as much in this, as in any other Kind of Submission.

Precedents

Precedents of the different Kinds of Submissions.

*A Bond of Submission, with Condition to
stand to the Award of two Arbitrators,
in Common Form.*

KNOW all Men by these Presents,
That I *A. B.* of, &c. do owe, and am
indebted unto *J. S.* of, &c. in the Sum of
100 *l.* of lawful Money of *Great Britain*,
to be paid unto the said *J. S.* his Executors,
Administrators or Assigns, on, &c. next en-
suing the Date hereof; to which Payment
well and truly to be made, I bind my self,
my Heirs, Executors and Administrators,
firmly by these Presents, in *Witness* where-
of, &c.

The Condition of the above Obligation
is such, That if the above Bounden *A. B.*
his Heirs, Executors and Administrators,
and every of them, for and on his and their
Parts and Behalfe, do and shall well and
truly stand to, obey, abide, perform, observe
and keep the Award, Order, Arbitrament,
final End and Determination of *S. G.* and
D. K. Arbitrators indifferently named, elec-
ted and chosen, as well for and on the Part
and Behalf of the above Bounden *A. B.* as
of the above named *J. S.* to arbitrate, a-
ward, order, adjudge and determine of and
concerning all, and all manner of Actions,
Cause and Causes of Action, Suits, Bills,
Bonds,

Bonds, Specialties, Judgments, Executions, Extents, Accompts, Debts, Dues, Sum and Sums of Money, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, both in Law and Equity, or otherwise howsoever, which at any Time or Times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, committed, omitted, done or suffered by or between the said Parties, or any or either of them, so as the said Award be made in Writing, and ready to be delivered to the said Parties, or any or either of them, on or before the — Day of — now next ensuing, then this Obligation to be void, &c.

A Bond with Condition to stand to the Award of three Arbitrators, or any two of them, and an Empire appointed.

BE it known unto all Men by these Presents, That *J. A.* of *Ec.* Esq; do own, and am indebted unto *B.* of *Ec.* Esq; in the Sum of a Thousand Pounds, *Ec.* to be paid to the said *B.* his Executors, Administrators, or Assigns, at or upon the, *Ec.* to which Payment well and truly to be made, I bind my self, my Heirs, Executors and Administrators, firmly by these Presents. *In Witness, &c.*

The Condition of this Obligation is such, That if the above bound *A.* his Heirs, Executors and Administrators, for his and their Parts and Behalfe, shall and do, in and by

E all

The Compleat Arbitrator

all Things, well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of — or any two of them, Arbitrators indifferently elected and named, as well by and on the Part and Behalf of the said *A.* as by and on the Part and Behalf of the above-named *B.* to arbitrate, award, order, judge and determine, of and concerning all and all manner of Action and Actions, Cause and Causes of Action, Suits, Bills, Bonds, Specialties, Covenants, Contracts, Promises, Accompts, Reckonings, Sums of Money, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, at any Time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said Parties, so as the Award of the said Arbitrators, or any two of them, be made and set down in Writing, under their or any two of their Hands and Seals, ready to be delivered to the said Parties in Difference, on or before the, &c. then, &c. And if the said Arbitrators shall not make such their Award of and concerning the Premises, within the Time limited, as aforesaid, then if the said *A.* his Heirs, Executors and Administrators, for his and their Parts and Behalf, do and shall well and truly stand to, observe, perform, fulfil and keep the Award, Determination and Umpirage (if the Umpire be named) of *G.* being a Person indifferently named and chosen between the said Parties, for Umpire; (if not named)

The Compleat Arbitrator.

51

named) of such Person as the said Arbitrators shall indifferently chuse, (for Umpire) in and concerning the Premisses, so as the said Umpire do make and set down his Award and Umpirage in Writing, under his Hand and Seal, ready to be delivered to the said Parties in Difference, on or before the, &c. then, &c.

If the Parties have a Mind to make their Submission a Rule of Court, pursuant to the Act of Parliament, they may signify their Consent in Writing, to be added to the Condition, as thus:

And it is hereby agreed, by and between the said Parties, That these Presents, and the Submission hereby made of the said Matters in Controversy, shall be made a Rule of his Majesty's Court of *King's Bench*, to the End the said Parties in Difference shall be finally concluded by the said Arbitration, by these Presents intended, pursuant to the Act of Parliament in that Case made and provided.

A Form of a Submission to an Arbitration according to the Statute, for making Awards by Rule of Court.

Memorandum, this first Day of, &c.
A. B. and C. D. being desirous to
end and determine divers Controversies,
Suits and Quarrels, that have been between
E 2 them,

them, (for which there is no other Remedy but by Personal Action or Suit in Equity) did agree to submit, and did submit and refer all the said Controversies, Suits and Quarrels to the Award of E. F. and G. H. Arbitrators indifferently chosen between them, to be made in Writing, under the Hands and Seals of the said Arbitrators, before the — Day of — next ensuing: And the said Parties did mutually promise and oblige themselves respectively, that they will perform and execute such Award as the Arbitrators shall make in the Premisses: And the said Parties did further agree, That their said Submission should be made a Rule in his Majesty's Court of Common Pleas, (or King's Bench) at Westminster; and that they will finally be concluded by the Arbitration that shall be made concerning the Premisses, by the said Arbitrators, pursuant to such Submission.

Some may affect to have the Bond of Submission in Latin, as thus :

NOverint Universi per presentes me A. de G. in Com. S. Generosum Teneri & firmiter Obligari B. de N. in Com' predict' Yeoman in Centum Libris bone & Legalis Monete Magne Britannie solvend' eidem B. aut suo certo attornato Executorib' Administratorib' vel assignatis suis ad quam quidem solutionem bene & fideliter faciend' obligo me Heredes Executores & Administratores meos firmiter per presentes sigillo meo sigillat' Dat', &c.

The

The Condition of the above Obligation is such, That if the above bounden *A.* his Heirs, Executors and Administrators, for his and their Parts and Behalfe, shall and do, in all Things, well and truly stand to, obey, abide, observe, perform, fulfill and keep the Award, Order, final End and Determination of *G. H.* and *J. K.* both of, &c. Arbitrators indifferently chosen and elected, as well on the Part and Behalf of the above bounden *A.* as of the above named *B.* to arbitrate, award, order, and determine of, for, and concerning one Action of Trespasse, now depending in his Majesty's Court of *King's Bench*; and also of, for, and concerning a Suit now depending in the High Court of *Chancery*, between the said Parties; and also of, for, and concerning an Account now subsisting and unbalanced between the said Parties; so that the said Award, Order, and Determination, be made of, for, or concerning the Premises, or any Part of them, in Writing, under their Hands and Seals, ready to be delivered to the said Parties, or to such of them as shall desire the same, on or before, &c. then this Obligation to be void and of no Effect, &c.

A Special Submission where the Matters are recited.

From two Persons, Attornies of Administrators.

THE Condition of this Obligation, &c. Whereas Differences have arisen between *A.* and *G.* since deceased, about and concerning—— which Differences not be-

The Compleat Arbitrator.

ing adjusted by the said *A.* and *G.* the above bound *B.* and *C.* the lawful Attornies, and for and on the Behalf of *D.* and *E.* Administrators of the Goods and Chattels of the said *G.* and the said *A.* have agreed to refer the said Differences to Arbitrators, &c. to arbitrate, &c. concerning the same, as here-under is mentioned: Now, &c. that if the said *B.* and *C.* and the said *D.* and *E.* and either of them, their Executors and Administrators, shall and do stand to, perform and keep the Award, Order, Arbitrament, final End and Determination, which the said Arbitrators as aforesaid, shall make, &c. in and concerning the said Matters in Difference, and all or any Actions, Suits, Accompts, Sum and Sums of Money, Damages, Claims and Demands concerning the same; then, &c.

Between the Master and Owners, and Freighters of a Ship.

THE Condition, &c. That if the above bound *A.* who was late Master of the Ship—— and the above bound *B.* *C.* and *D.* Part-Owners of the said Ship, and the rest of the Part-Owners thereof, do and shall, in and by all Things, well and truly stand to, perform and keep the Award, Judgment, final End and Determination of—— Arbitrators indifferently chosen, as well by, and on the Part and Behalf of the said *A.* *B.* *C.* and *D.* as by and on the Part and Behalf of the above named *E.* and *G.* to arbitrate, judge and determine of and concerning
all

all and all manner of Actions and Suits, and Causes thereof, Debts, Dues, Covenants, Contracts, Agreements, Sums of Money, Controversies, Differences, Claims and Demands between the said Parties, or any of them, relating to, or concerning the said Ship—and her late Voyage—and thence to—in the Year——, so as the said Arbitrators shall make, &c. *as usual*.

Between two Masters of a Ship, for themselves and Owners, about a Prize.

WHEREAS Differences, &c. between the above bound *A.* and the rest of the Part-Owners of the Ship——, whereof the said *A.* is Commander, of the one Part, and the above named *B.* and the rest of the Part-Owners of the Ship——, whereof the said *B.* is Commander, of the other Part, concerning the Parts or Proportions claimed by, and belonging to the Owners of the said several Ships, in respect thereof, and in a *French*—— or Vessel, called the——, Master, and her Loading, which was lately taken as a Prize, by the said *A.* and *B.* in and with the said Ships—and—— all Monies arising thereby: Now, &c. that if the said *A.* and the rest of the Part-Owners of the said Ship——, their Executors and Assigns, do and shall, in and by all Things, well and truly stand to, perform and keep the Award, Judgment, final End and Determination of, &c. Arbitrators in-

differently named, by, and on the Behalf of the said Parties in Difference, to arbitrate, judge and determine the said Matters in Difference between them, and all or any Actions, Suits, Accompts, Sums of Money, Damages, Claims and Demands concerning the same, so as their Award shall be made, &c.

Note, That in most Bonds from one or more Part-Owners, on Behalf of the rest, are put in just before Now, &c. these Words, and the said ——— hath undertaken for the rest of the Part-Owners of the said Ship, Performance of such Award as shall be made concerning the same; and then, the Condition, that if the said ———, and the rest of the Part-Owners of the said Ship, their Executors, Administrators and Assigns.

Between the Assignees in a Commission of Bankrupt, and a Master of a Ship that belonged to the Bankrupt.

WHEREAS Differences, &c. between the above bound *A.* and the above named *B.* and *C.* Assignees and Trustees, by Virtue of a Commission of Bankruptcy awarded against *E.* by his Consent and Desire, to defeat Attachments about and concerning an Accompt depending between the said *A.* and *E.* concerning the Ship ———, whereof the said *A.* was Master; which Difference concerning the said Ship, and all or any other Accompts, Matters and Things depend-

depending between the said *A.* and the said *E.* they the said Parties have agreed to refer to the Award, Judgment and Determination of ———, Arbitrators indifferently named and chosen, by and between the said Parties in Difference, in and concerning the Premisses: *Now, &c.* that if the said *A.* do and shall, *&c.*

from the Part Owners and Master, to be made a Rule of Court, and another sort of Penalty.

WHEREAS Differences and Suits have arisen, and are depending between *A. B. C.* and *D.* of, *&c.* Part Owners of the good Ship or Vessel, called the *A.* Burthen about — Tons, whereof *E.* late was Master, of the one Part, and the said *E.* of, *&c.* of the other Part, about and concerning the said Ship, and her late Voyage to *F.* and back to *London*, and the Accompts thereof; all which Differences and Accompts, and all other Matters and Things concerning the said Ship, and her said late Voyage, and all Actions, Suits and Causes thereof, Accompts, Reckonings, Sum and Sums of Money, Payments, Covenants, Agreements, Controversies, Damages, Claims and Demands between the said Parties, concerning the same, all the said Parties do hereby agree to refer, and the same are hereby referred and submitted to the Arbitrament, Judgment, final End and Determination of *E. G.* and *H.* of, *&c.* or any two of

of them, Arbitrators indifferently named and chosen, by and between the said several Parties, to award, order, judge and determine of and concerning the same, as hereunder is mentioned. Now therefore these Presents witness, That the said *A. B. &c.* for themselves, their Executors and Administrators, severally and respectively, &c. Judgment and Determination, in, about and concerning the said Matters hereby referred; which *E. G. and H.* Arbitrators as aforesaid, or any two of them, shall make, declare and set down in Writing Indented, under their, or any two of their Hands and Seals, on or before, &c. to the Performance whereof the said *A. B. C. and D.* bind themselves, their Heirs, Executors and Administrators, severally and respectively, and not jointly nor, unto the said *E.* his Executors, Administrators and Assigns, in their several Proportions, according to their Parts in the said Ship, of the Sum or Penalty of 1000*l.* of lawful Money of Great Britain, firmly by these Presents; and it is hereby agreed, by and between the said Parties, that these Presents, and the Submission hereby made of the said Matters in Controversy, shall be made a Rule of his Majesty's Court of *King's Bench*, to the End the said Parties in Difference shall be finally concluded by the said Arbitration, by these Presents intended, pursuant to the late Act of Parliament in that Case made and provided. *In Witness, &c.*

A Submission to Arbitration, with Covenants to perform the same, and with Exceptions in the Submission.

This Indenture made, &c. between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part, Witnesseth, That the said *A. B.* and *C. D.* do by these Presents, willingly compromise and submit themselves, and either of them, to the Award, Arbitrament, Determination and Judgment of *E. F. G. H.* and *J. H.* Arbitrators indifferently named, elected and chosen by the said Parties, to arbitrate, award, order, determine finally, and to make, judge, decree of, for, upon and concerning all and all manner of Actions, Causes of Actions, Suits, Debts, Strifes, Accompts, Reckonings, Sum and Sums of Money, Trespasses, Variances, Quarrels, Bonds, Specialties, Matters and Demands whatsoever, had, made, risen, moved or depending, or which might have been had, or moved, between the said Parties in the King's Majesty's Court of *Common Pleas*, or before, &c. and except one Debt of eighteen Pounds due to the said *A. B.* by the said *C. D.* for the Price of certain Corn, &c. and except all Lands and Tenements of the said *A. B.* and such like Exceptions, &c. so always that the said Arbitrators do make their Award, Order, and Judgment, of and concerning the Premises, to be made by Writing Indented, under
all

The Compleat Arbitrator.

all their Hands and Seals on this Side, and before the 10th of *June* now next ensuing, and one Part of the same deliver, or cause to be delivered unto the said *A. B.* or his certain Attorney or Attornies, Deputy or Assigns in that Behalf, requiring the same at, or in, &c. and the other Part of the said Award to the said *C. D.* his Attorney or Attornies, Deputy or Assigns, requiring the same at the said Day and Place; and so always, that the said Arbitrators do not, by the said Award, order or appoint any Act or Acts, Thing or Things, to be done or performed, by, or to any Person or Persons, other than to or by the said Parties to these Presents, their Heirs, Executors, Administrators or Assigns, or some of them, and not to or by any Stranger or Strangers to this present Submission; and the said *A. B.* and *C. D.* and either of them, for themselves, their Heirs, Executors and Administrators, and the Heirs, Executors and Administrators of either of them, do by these Presents mutually covenant, conclude, promise and agree, to, and with the other his Executors, Administrators, and every of them, that neither they, nor either of them, will at any Time hereafter revoke their Authority hereby given to the said Arbitrators, nor Discharge them, nor either of them, in the said Faculty or Power of Arbitration, and that they and either of them, and the Heirs, Executors and Administrators of either of them, for his and their Parts, shall and will well and truly observe, perform, fulfil and keep, all and every

Clause,

Clause, Sentence, Article, Submission and Agreement in these Presents mentioned, on his or their Part, to be performed and kept, according to the Tenor and true Intent of the same.

C H A P. IV.

Parties to the Submission.

WE come now to inquire into the third Thing, which is absolutely essential to every Award, which is, that there be proper Parties to the Submission; we shall therefore in this Chapter take Notice, and shew what Persons they are which the Law allows or disables from being Parties; how the Submission and Award is to be made between them, and who can take Advantage of the Award, or are bound by it, though they have not been Parties to the Submission.

Sect. I. What Persons the Law allows of as good Parties to the Submission.

Sect. II. What Persons are disabled from being Parties.

Sect. III.

The Compleat Arbitrator.

Se^ct. III. How the Submission, and the Award thereupon, may be made between them.

Se^ct. IV. Who may take Advantage of the Award, or are bound by it, though they have not been Parties to the Submission.

S E C T. I.

What Persons the Law allows of as good Parties to the Submission.

1. **I**T is clear, that all Persons who are capable by Law of disposing of their Properties, or of making any Contract or Agreement relating to them, are capable, and may be Parties to a Submission; and that they may not only bind themselves, but likewise may engage for Strangers, for whom they shall be answerable, and may likewise bind their Heirs, Executors and Administrators.

2. If there be a Controversy for a certain Thing between *A.* and *B.* of the one Part, and *C.* *D.* and *E.* of the other Part, and *C.* in Consideration of 6 *d.* given him by *A.* and *B.* submits the Matter for himself, and *D.* and *E.* and assumes to stand to the Award, and *A.* and *B.* submit of the other Part, and the Arbitrators award that *C.* shall pay so much

much to *A.* and *B.* in Satisfaction of the Controversy; this is a good Award, and *C.* is bound to perform it, though it concerns two Strangers to the Submission, for *C.* hath undertaken for them. 1 *Rol. Abr.* 244.

3. One Partner having submitted on his own and his Partner's Behalf, it was held by the Court, That though the Partner who did not submit was not bound by the Award, yet he who submitted and undertook for him, was obliged to see that he performed what was awarded for him to do; otherwise it was a Breach of his Promise. 2 *Mod.* 228.

4. The Condition of a Bond of Submission recited that there were Differences between the Plaintiff *A.* and one *B.* who lived at *Hamburgh*, and that the Defendant *C.* as Attorney for the said *B.* and the Plaintiff *A.* had submitted all Matters, &c. between *A.* and *B.* unto the Arbitrators, &c. therefore if the Defendant *C.* did perform the Award, then, &c. the Arbitrators awarded, That the Defendant *C.* on the Behalf of *B.* should pay to the Plaintiff *A.* 300*l.* and that the Plaintiff should execute a general Release unto the Defendant *C.* and this Award being set forth in the Declaration, the Defendant demurred: And it was argued, that this was an Award only *ex parte*, and therefore void, for that there was no Award on the Part of *B.* who was the principal Person concerned, for the Differences were between him and the Plaintiff, and not between him and the Defendant; and therefore the Awarding the Plaintiff to release to the Defendant signified nothing, because *B.* can take
no

no Benefit by such Release, for he will still remain liable to, and charged with the Demands of the Plaintiff; for the Award has not determined the Differences to which the Parties submitted, for those were between the Plaintiffs *A.* and *B.* and not between the Plaintiff *A.* and *C.* the Defendant; and after many Debates it was so adjudged. But *Note*, The Court allowed that the Submission by the Defendant as Attorney for *B.* was good, and would have obliged him to pay the Money awarded, if the Award had been reciprocal with respect to *B.* also. Adjudged *Trin. 9 W. & M.* between *Bacon* and *Dubarry. Carth. 412, 413. 1 Salk. 70. S. C.*

5. If the Condition of an Obligation be, That whereas *A.* has, by himself and his Son, submitted to the Award of *B.* and *C.* *Ita quod, &c.* before the 1st of *May*, and if they make none, to such Umpire, as they should chuse to be made before the first of *June*, and the Arbitrators make no Award, but chuse an Umpire, who makes an Award, but *Quoad* the Son awards nothing; this is a void Award; for though the *Ita quod* be in the Clause referring to the Arbitrators, and the Award is made by the Umpire, yet the *Ita quod* by Construction relates as well to the Umpire as Arbitrators. Between *Bean* and *Newbury. 1 Lev. 139.* adjudged.

By the above Cases it appears, that tho' one Person may submit for another, and is bound to perform whatever was awarded relating to such Person, and likewise, that a Person may bind himself by submitting by Attorney; yet it is regularly necessary that the

the Award be made between them who are chiefly interested in the Matters in Controversy.

S E C T. II.

What Persons are disabled from being Parties.

1. **A**S it hath been already observed, that all Persons, who by Law may dispose of their Properties, may likewise be Parties to a Submission; it seems that Infants, Ideots, Lunaticks and Madmen, are excluded; also * Feme Coverts without their Husbands, and such as are attainted of Felony or Treason, and Persons outlawed or waved in Personal Actions, for they have no Goods. 36 H. 6. 26.

2. It was held, that Persons Civilly dead, as Monks, Fryers, Canons, professed Nuns, &c. could not submit. 14 H. 8. 6.

3. The Submission of such as are compelled thereto by Threats and Imprisonment, &c. is not good, for the Consent ought to be free. 8 Aff. 25.

4. So they who have joint Power with others, cannot singly submit in relation to such Power, without their Fellows; as a Dean without a Chapter, a Mayor without his Commonalty, the Master of a College or Hospital without his Fellows; and so of other Societies and Guilds. 21 E. 4. 13.

5. As to a Submission by an *Infant*, there has been some Doubt about it, the Year-

Book of 13 H. 4. 12. says expressly, That if an Infant submits a Battery done to himself, and an Award is made thereupon, yet this shall not bind the Infant.

6. So if an Infant submits a Trespass done to him in his Land, and an Award is made thereupon, yet this shall not bind him. 10 H. 6. 14.

7. If one gives Bond, in the Condition of which is recited, that an Infant hath submitted to the Award of J. S. and it is conditioned that he shall perform the Award, it is void. *March III, 141.*

8. Afterwards it coming in Question, Whether the Submission of an Infant was good, the Judges seemed to think that it was good, so as to bind the Party of the other Side; and as to the Infant himself, that it was only voidable, and a Matter to which he may agree or disagree, when he came to full Age. *Between Knight and Stone, 1 Jones 164.*

9. In Debt upon an Obligation against A. conditioned, that if he, and B. his Son, and each of them, perform the Award of C. D. *Ec. ita quod, Ec. A.* the Defendant pleads, that his Son was within Age; to which the Plaintiff demurred. And it was argued, that a Submission by an Infant is void, and a Submission being void in Part, both that and the Award are void *in Toto*. But the Court would give no Opinion as to the Point, whether the Submission by an Infant, or by the Father on Behalf of an Infant, be void; but they held clearly, that the Father's Submission on Behalf of himself was good,

good, and the Arbitrators may make their Award between him and the Plaintiff only; and the Plea does not answer to that, but contains a collateral Matter in Bar; and therefore, though no Breach be assigned, nor no Award pleaded in the Replication, yet Judgment was given for the Plaintiff. Between *Bowyer* and *Blorksfidge*, 1 Lev. 17.

10. Concerning Submissions by Feme converts, it is held clearly, That when a Right or Interest vests in the Husband by the Marriage, or when he becomes chargeable, his Submission alone is sufficient. So it was held, That the Submission of a Term which the Husband had in Right of his Wife, was good, though she was but Administratrix. *Style* 351.

11. But if any Thing is to be done by her which the Law requires, it is otherwise, with respect especially to her Inheritance, or such Things as are given her in Trust with her Husband's Consent and Privity; in which Cases she must be made a Party, 5 Co. 77. b.

S E C T. III.

How the Submission, and the Award thereupon, may be made between them.

AS there may be several Parties to an Award, who may enter into several distinct Bonds, or be bound jointly and severally in the same Bond, Care must be taken how the

68 **The Compleat Arbitrator.**

Submission and Award be made, as appears by the following Cases.

1. If there be a Controversy concerning certain Lands between *A. B.* and *C.* and thereupon *A.* of the one Part, and *B.* and *C.* of the other Part, submit to the Award of *J. S.* and thereupon *A.* binds himself in an Obligation of 1000 *l.* to *B.* and *C.* with Condition to perform the said Award of *J. S.* touching this, and *B.* and *C.* because they would not be bound the one for the other, enter into several Obligations of 1000 *l.* a-piece to *A.* with several Conditions for the Performance of the Award of the said *J. S.* and the Arbitrators award that *A.* shall make a Release of all his Right in the Lands to *B.* and *C.* and in Consideration thereof, *B.* and *C.* should pay 300 *l.* to *A.* and in an Action of Debt by *A.* against *B.* upon this Obligation, for Non-performance of the Award, it was held to be good; and the Breach assigned was, That *nec B. nor C.* paid the 300 *l.* at the Time appointed by the Award; all this Matter being disclosed in the Pleading; for upon all the Matter shewn, it appears that *C.* is no Stranger to the Award, for he and *B.* submitted themselves jointly, though they entered into several Obligations. Between *Haies* and *Haies*, *Cro. Car.* 433.

2. If *A.* and *B.* of the one Part, and *C.* of the other Part, submit themselves to the Award of *J. S.* of all Matters between them, *J. S.* may make an Award of any Matter between *A.* only, and *C.* though *B.* hath nothing to do therewith, for the Submission shall

shall be taken distributively. 1 Co. 98. But it is said, that if the Submission was with an *Ita quod*, something must be awarded to B. *Style 151.*

3. If A. and B. of the one Part, and C. of the other Part, submit to the Award of J. S. who awards that B. shall pay a certain Sum of Money unto C. in Satisfaction of all Differences between A. and B. of the one Part, and C. of the other Part; this is a void Award as to A. and he is not concerned therein; for the Money paid by one, can be no Satisfaction for the other. *Style 471. adjudged nisi.*

4. If three Persons, *scilicet* A. B. and C. of the one Part, and D. of the other Part, submit themselves to the Award of J. S. *ita quod*, &c. and he makes an Award between A. and B. of the one Part, and D. of the other Part, and makes no Award between C. and D. this is not good, because the Submission is conditional; and it is recited in the Submission, that there were divers Controversies between them all. 1 Rol. Abr. 261.

The Condition of a Bond of Submission recited, that there were Differences between several Persons on one Side, and several on the other; and that the Award may be made between them, or any of them; and it was held, that upon this Submission the Arbitrators may make an Award between any one of the Parties of the one Side, with one of the Parties of the other. *Hard. 399.*

This Matter is carried much farther in Equity, if the following Case will be allowed a good Precedent.

A. and *B.* Executors of *J. S.* on the one Part, and *C.* his Widow on the other, submit to Arbitration, the Arbitrators may make an Award, not only of Matters in Difference between *A.* and *B.* jointly, or *A.* and *B.* separately, and *C.* but also of Matters between *A.* and *B.* provided they have Knowledge of the whole Fact, and all the Parties interested are before them. Between *Carter* and *Carter*, 1 *Vern.* 259.

S E C T. IV.

Who shall take Advantage of the Award, or are bound by it, though they have not been made Parties.

1. **I**F divers on the one Part have done a Wrong or Trespas to another, and he to whom the Wrong is done, and one of the others, submit themselves to an Award; upon the Award made, the others, though not Parties to the Submission, shall have Advantage in Extinguishment of the Trespas. 7 *H. 4.* 31.

2. If *A.* hath the Custody of my Cattle, and during the Custody they do a Trespas to *B.* and *A.* and *B.* submit this Trespas to Arbitrament, and an Award is made, and *A.* performs it; if *B.* brings Trespas against me for this Trespas, I may plead in Bar the Award.

ward between the Plaintiff and the Stranger.

7 H. 4. 31. b. 1 Rol. Abr. 268.

3. An Award made upon the Submission of the Predecessor Prior, shall bind the Successor. 2 H. 4. 4.

4. If *A.* and *B.* submit to the Award of *J. S.* and he awards that *A.* shall pay to *B.* 30*l.* within two Months next following, and that upon Payment thereof they shall give mutual Releases to one another, and within the said two Months *B.* dies, the Money shall be paid to his Executor, and thereupon the Executor must release, for the Award creates a Duty: Adjudged in an Action brought by the Executor, upon the Bond for Non-performance of the Award. *Mich.* 1 Will. & Mar. Between *Dawny* and *Vosey*, 2 Vent. 249.

5. An Award was worded in the Disjunctive, that *he* or *his* Executor should perform, &c. and *Holt* C. J. seemed inclined to reject the Word *Executors*, not but that an Award (he said) may extend to Executors, and bind them; but because the Executors, as Representatives, would be liable of Course. 1 Salk. 69.

C H A P. V.

The Arbitrators and Umpire.

THE *Arbitrators* are private extraordinary Judges, chosen by the Parties to give Judgment between them, to end the Debate; they are called Arbitrators from the Word *Arbiter*, and the Arbitrary Power with which they are invested.

An *Umpire* may be defined *one* Arbitrator, who is usually appointed, when the Parties submit themselves to the Arbitrament or Award of certain Persons; and if they cannot agree, or are not ready to deliver their Award in Writing before such a Time, then to the Judgment of another as *Umpire*; this is the Effect of the Bond of Submission.

Though the Law has not been very exact in describing the necessary Qualifications of an Arbitrator, nor in prescribing Rules concerning their Partiality, Honesty and Judgment; yet it will be necessary in this Chapter to say something, as well of the Qualifications of the Arbitrators, as of their Authority and Duty, together with the Authority and Duty of the Umpire, when they begin and when they end, &c.

Sect. I. Who may be proper Arbitrators.

Sect. II.

Sect. II. Concerning their Authority and Duty.

Sect. III. Rebocation of their Power and Authority, and the Consequence thereof.

Sect. IV. Concerning the Empire, and when his Authority commences.

S E C T. I.

Who may be proper Arbitrators.

1. **A**S the Arbitrators are Persons of the Parties own chusing, and as the Law presumes that every Man will be so wise as to pitch upon a Person, whose Understanding and Honesty he can rely on; it has seldom happened that an Award was held void, when there appeared nothing else to vitiate it, especially in a Court of Law; but though the Courts of Law have been pretty strict in this particular, yet Awards have, and are often set aside in a Court of Equity, for Corruption and Want of Understanding in the Arbitrators.

2. It is therefore the Interest of both Parties, to chuse Men of Honesty and Understanding to be their Arbitrators, and to acquaint them truly of the Facts they are to go upon; for if they appear to be mistaken in a Matter of Fact, a Court of Equity will 2 Vern. 705. set aside the Award.

3. But

3. But a bare Suggestion of Want of Understanding, or Want of Honesty, will not be sufficient; the Proof must be strong, and the rather, because, as was said before, they are of the Parties own Chusing, who by his Choice of them, admitted them to be wise and honest enough for his Purpose; but if he happens to be mistaken, it will be good Proof for him, with Respect to their Understanding, to show,

4. That they, or one of them, was an Infant, and of such an Age, as not to be capable of judging of the Matter in Controversy; for alledging or proving him to be an Infant generally, without shewing that the Matter was not level to his Understanding, will not be sufficient.

5. That they were *Idiots* or *Lunaticks*, *Deaf*, *Dumb*, or *Blind*, which may be proved by any other Act of theirs, as well as by any Error or palpable Mistake relating to the Award.

6. As to *Honesty* and *Indifferency* (*West* says) that they must be void of Malice and Favour to either of the Parties; That they must not be notorious by Outlawry, excommunicated, irreligious, nor covetous; for though they have absolute Power, yet their Judgment or Sentence ought to be sincere and incorrupt, according to Right and Equity, without Malice, Flattery, and every other vicious Affection or Perturbation, which may in any Sort lead them awry from the right Path of Justice and Equity, though the Law prescribes no Rules herein. *West. Symb. Part 2. Sect. 27.*

7. If

7. If a Submission is to ~~three~~ Arbitrators, or any Two of them, and Two of them by Fraud or Force will exclude the other, that alone is sufficient to vitiate the Award; or if they have private Meetings, and admit one of the Parties, but give no Notice to the other, but suffer the Party's Attorney, whom they admitted to draw up the Award, such Award shall be set aside for Partiality and Unfairness. *Mich. 1705, between Burton and Knight, 2 Vern. 514.*

8. It is a general Rule in Equity, that when it appears that any one of the Arbitrators were any way interested in the Matters in Controversy, the Award is to be set aside.

9. The Condition of a Bond of Submission recited, that *A.* the Plaintiff, and *B.* the Defendant should perform the Award of Four, whereof *A.* the Plaintiff was named as one; and it was insisted upon by Serjeant *Hard.* among other Things, that the Award was void upon this Account; and that a Person who is to perform the Award, cannot be both a Judge and a Party; and that it was a principal Challenge, if an Arbitrator be one of the Jury; much less must the same Person be both Arbitrator and Party; but there is no Judgment in the Case. *Hard. 44.*

10. It is the strongest Argument of Partiality, to shew that the Arbitrators received from either of the Parties any considerable Sum of Money, or any other Present, which may be a Temptation to them to act corruptly; but the Sum or Present must be proved to be so exorbitant as to induce the Court

Court to believe that it biassed their Judgments, otherwise it will be of no Effect.

S E C T. II.

Concerning their Authority and Duty.

1. **A**S it is by the Submission, that the Arbitrators are armed with all the Power and Authority which they have, it is necessary for them to be very careful, that they square themselves according to it, otherwise they will be apt to do the Parties a Prejudice, when they intended them a Kindness by the Award they make; it is therefore necessary for them to know when their Authority begins, and when it ends.

2. The Arbitrators may make their Award the very Day the Bonds of Submission bear Date, and it shall be good; so if they make their Award before the Bonds of Submission are entred into, and publish it afterwards, it shall be good. *Latch* 14, 60.

3. In Debt upon a Bond, conditioned to perform an Award, the Defendant pleaded, *Nullum fecerunt Arbitrium*; the Plaintiff replies, and sets forth the Award, which did express the Bond of Submission to be dated the 7th of February, whereas it was dated the 10th of February; and for that Misrecital the Defendant demurred; but the Court held clearly, that it did not hurt the Award. *Between Toll and Dawson, 1 Vent. 184.*

4. The

4. The Condition of a Bond of Submission was, to stand to the Arbitration of four Arbitrators; so as the Award be made in Writing, ready to be delivered to the Parties, before the 6th Day of *January* then next following; and the Arbitrament was made the 5th Day of *January*, betwixt the Hours of 8 and 9 in the Night; and whether the Defendant be bound to perform it, or not, was the Question; and after Argument, the Court held, that it was well enough for the Time, and that the Defendant ought to perform it, for it is made before the 6th Day; and altho' it be made in the *Night* of the 5th Day, it is well; for Things done in the Night, where personal Attendance is not requisite, are good, and the rather, because that an Arbitration is a judicial Act. Between *Witbers* and *Drew*, *Cro. Eliz.* 676.

5. The Arbitrators cannot make their Award by Parcels. *1 Rol. Abr.* 250. So if Two submit all Debts, Trespasses, and other Things, *ita quod* the Award be made before such a Day; if the Arbitrators make an Award of Debts at one Day, and of Trespasses at another Day, and of other Things at another Day, though they are all before the Day appointed, yet this is not a good Award as to the two last Awards, because they have Power to make but one Award. *39 H. 6.* 12.

6. But the Arbitrators may at one Day consider one Point, and at another Day another, and at a third the third Point; and then give one Judgment upon all the Points;
so

so that the Judgment ought to be one, and not several. 1 *Roll. Abr.* 250.

7. As the Arbitrators are obliged to take Notice when their Authority commences, in like Manner are they obliged to take Notice when it ends; for they cannot regularly reserve any Thing for their future Judgment, when the Time allowed them is expired.

8. If *A.* and *B.* submit to the Award of *J. S.* so that he makes his Award before the 8th of *March*, and *J. S.* accordingly makes his Award, that *A.* shall pay to *B.* 30 *l.* viz. 10 *l.* at *Michaelmas*, 10 *l.* at *Christmas*, and 10 *l.* at *Lady-day*; and if before the said last Payment, *videretur* to the said *J. S.* that *A.* was engaged for the said *B.* in any Debt not satisfied, that then the said *B.* should repay unto the said *A.* so much Money as the said Debt amounted to; this Award is void, because not final, for Part is reserved to his future Judgment; which an Arbitrator cannot do. Between *Winch & al.* and *Sanders*, *Cro. Jac.* 584.

9. But it is said, that if the Award had been, that if *A.* shews any Bill of Debt to such a Sum, that then this Sum certain shall be repaid, perhaps it may be a good Award. *Ibid.*

10. If an Award be, that one shall pay so much Money to the other; and if it can appear that more was due, and due Proof is made thereof within one Month, then he shall pay this also; and the Submission was, *ita quod Arbitrium fiat* before such a Day, which was before the End of the Month; it

it seems that this is not a good Award. *1 Rol. Abr. 251.*

11. There is a Distinction taken where the Arbitrators reserve to themselves a Power within their Time, and over a Matter submitted, the Award is not final, and so void: But when the Power goes to a Matter not within the Submission, the Power is void, and the Award good. *Palm. 110.*

12. There is likewise a Diversity taken where the Arbitrator reserves to himself a Power, after the Day allowed him to make his Award, to do a ministerial, and where a judicial Act; the first is held to be good, but the latter is void. *Palm. 146.*

13. If the Award be, that one Party shall pay 105 *l.* at such a Day; and if he does not pay it at the Day, that he shall pay at such a Day after 110 *l.* this is a good Award, for it is but a Penalty for the Non-payment at the Day, which was all in the Power of the Arbitrators. *1 Rol. Abr. 250.*

14. In like Manner has it been held a good Award, that one shall enjoy Lands for three Years, rendring to the other 5 *l.* yearly; provided that if he does not pay the said Rent, that then the Award, as to the Enjoyment of the said Lands, shall be void. *Gro. Jac. 423.*

15. If Two submit themselves to the Award of *J. S. Ita quod fiat* before *Michaelmas*, and the Arbitrators award that one shall pay 5 *l.* to the other for ten Load of Wood, and award several other Matters for other Things; and after this Award, if he that is to pay it, can disprove, or better prove

prove the Payment of any of the said Sums before them, or any of them, before the said Feast of *Michaelmas*, then so much as is proved shall not be paid at the said Feast: This is a good Award, for the first Part is good; and so thereby the Authority of the Arbitrators ended; and then a Reference to Proof or Disproof, is meerly void. Between *Beckwith* and *Warley*, *Hob.* 218.

16. As the Arbitrators have but a bare Authority, they cannot assign their Power to another; as if the Condition be to stand to the Award of *J. S.* and *J. D.* and they Award that the Party shall stand to the Award of *J. M.* this is not good. 1 *Roll. Abr.* 244.

17. And it is said by *Hardres* *arguendo*, that if the Arbitrators award, that Lands in Debate shall be measured by others in their Presence; that it is void in Law, because they cannot give their Power to another. *Hard.* 45. But *quære* of this last Case; and *note*, that by the following Cases there is a plain Diversity where the Arbitrators award a ministerial, and where a judicial Act to be done by a Stranger.

18. For where a ministerial Act only is to be done by a Stranger, it is good; as if an Award be, that one shall pay 10*l.* to the other, and in Surety of Payment he shall be bound in an Obligation to the other, by the Advice of his Counsel; this is good; for it is incident and pursuant to the Submission, that the Payment should be made sure, which is only a ministerial Act in the Counsel. 1 *Roll. Abr.* 250.

19. If

The Compleat Arbitrator.

81

19. If there be an Award that one Party shall pay 10*l.* to the other, and that the other shall make a general Release, as fully and beneficially as Counsel shall advise; this is a good Award; for the Counsel hereby hath not any Power to do a judicial Act, but a ministerial only; for the Arbitrators have directed the Extent of the Release, *scilicet* to be general, and the Counsel is to make it as strong in Law as he can. Between *Cater* and *Startut*, *Style* 217.

20. An Award that one of the Parties shall pay such Costs as a Prothonotary shall tax, is good, and only a ministerial Act in him. 1 *Sid.* 258.

21. An Award to pay 20*l.* for a Horse, if *J. S.* shall say it is worth so much, is said to be good; and that a ministerial Act only is referred to *J. S.* 2 *Roll. Rep.* 214. But in *Palm.* 147. the Resolution is contrary, and there it is said to be a judicial Act.

22. An Award that one of the Parties shall release all Actions, &c. *ut talis adviseret*, was adjudged void, because a judicial Act was referred to be done. *Cro. Eliz.* 726.

23. An Award that one Party shall leave so many Trees for House-bote, &c. as the Arbitrators, upon Advice with Counsel at the next Assizes, should appoint, is not good. *Adjudged Cro. Jac.* 315.

G

SECT.

PH

MUSEVM
BRITANNICVM

S E C T. III.

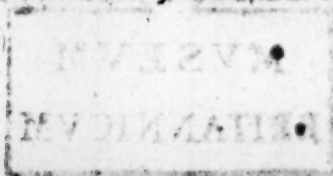
Revocation of their Power and Authority, and the Consequence thereof.

1. **I**T is expressly resolved, that a Submission to an Arbitration may be revoked, though made irrevocable by the strongest Words, such Authorities in their own Nature being revocable. *Vinyor's Case*, 8 Co. 81, 82.

2. But if the Submission be by Bond, if the Party revokes, he forfeits his Obligation; he must likewise give Notice of the Revocation; for it is a Matter which the Party may take Issue upon; but if he who revoked pleads the Revocation, Notice shall be intended, for it is no Revocation without Notice; the Revocation must be in Writing, if the Submission was by Bond. *Ibid.*

3. But if the Submission be by *Parol*, the Party may revoke at Pleasure, and he forfeits nothing; *ex nuda Submissione non oritur Actio*; but he must in this Case likewise give Notice of the Revocation, tho' it need not be in Writing, and the Notice must be to the Arbitrators themselves. *Ibid.* 1 Sid. 281.

4. If the Submission be made a Rule of Court, pursuant to the Act of Parliament, if either of the Parties revokes, the Court will grant an Attachment, though before that Statute it was doubted, whether the Court could



could grant an Attachment in such Case, as appears by 1 *Sid.* 452, 453.

5. If a Feme Sole submits to an Award, and before the Award made takes a Husband, this is a Revocation of the Submission. 1 *Fon.* 388.

S E C T. IV.

Concerning the Umpire, and when his Authority commences.

1. **A**N Umpire is a Person appointed to determine the Matters in Controversy, upon the Disagreement of the Arbitrators; and he is sometimes named in the Submission by the Parties themselves, and sometimes the Arbitrators have Power to name him; he must regularly follow the same Directions in making his Umpirage, that the Arbitrators do in making their Award.

2. If two Men submit themselves for all Matters, &c. to the Award of certain Arbitrators, to be made before a certain Day; and if they do not make any Award before the Day, that then they submit to the Ordinance and Judgment of J. S. If the Arbitrators make an Award of Part of the Things submitted, and of Part not, the Umpire cannot make any Award of this Part of which the Arbitrators have made no Award; because he hath no Power given, but if the Arbitrators make no Award. 39 *H.* 6. 10.

The Compleat Arbitrator.

3. But if the Submission be, that if the Arbitrators make no Award of the Premises, or of any Parcel thereof, that then the Umpire shall have Power to make an intire Award, or of the Parcel which remains, as the Case is; in this Case the Arbitrators may make an Award of Parcel, and the Umpire of the Residue, because this is expressly ordained 39 H. 6. 11. b.

4. If the Condition of an Obligation be, that whereas *A.* and his Son, of the one Part, &c. have submitted to the Award of *B.* and *C.* *ita quod*, &c. before the 1st of May; and if they make none, to the Award of such Umpire as they should chuse, to be made before the 1st of June; and the Arbitrators make no Award, but chuse an Umpire who makes an Award; but *quoad* the Son awards nothing; this is a void Award; for though the *Ita quod* be in the Clause referring to the Arbitrators, and the Award is made by the Umpire, yet the *Ita quod*, by Construction, relates as well to the Umpire as Arbitrators. Between *Bean* and *Newbury*, adjudged 1 Lev. 139.

5. But what is chiefly to be regarded with Respect to the Umpire is, that he commence upon his Office on a proper Time, that is, if he be to be named by the Arbitrators, that they do not appoint him till the Time allowed themselves be expired; or if he be already named by the Parties, that he do not enter on his Office before the Time allowed the Arbitrators be expired, by Reason of the Inconvenience of having a concurrent Jurisdiction; and as this Matter has occasioned

sioned some nice Resolutions, as well as such as are not easily to be reconciled, I have set down all the Cases to be met with on this Subject.

6. If a Submission be to the Award of certain Arbitrators, and if they cannot agree, or are not ready to deliver their Award in Writing before the 1st of *May*, then the Submission is made to *J. S.* to be the Umpire, to be made before a certain Day after; if the Arbitrators do not treat of the Matter, so that there is no Disagreement between them, yet if they do not make any Award before the Day, the Umpire may make an Award upon this Submission, for the Words, *And if they cannot agree*, are not to be taken literally, but as if they had been, *if they do not agree upon any Award.* 1 *Roll. Abr.* 261.

7. If the Condition of an Obligation be, to stand to the Agreement or Award of *A.* and *B.* being Arbitrators chosen for that Purpose, to end a Controversy between the said Obligor and Obligee, and *J. S.* being Umpire for both Parties, &c. in this Case, if *A.* and *B.* who are the Arbitrators, make an Award without *J. S.* this is a good Award; for though the Words are in a Manner *Prima facie* uncertain, yet because the common Usage is to limit an Umpire to make an End, if the Arbitrators cannot, it shall be so interpreted; and that the Words *J. S. being Umpire*, shall be taken as an Affirmative *per se*, that he is an Umpire. 1 *Roll. Abr.* 261, 262.

The Compleat Arbitrator.

8. But if a Submission be to Four, and to the Umpirage of *J. S.* the Four and *J. S.* may join in making of an Award; otherwise if their Power had been divided in the Submission; as if it had been to the Four, and if they could not agree, then to *J. S.* *1 Bullst. 184.*

9. If a Submission be to stand to the Award of certain Arbitrators, and that if they disagree, then to the Umpirage of *J. S.* *ita quod* the Award or Umpirage are made before the 1st of *May*; in this Case the Umpire cannot make any Award till a Disagreement made by the Arbitrators; and the Arbitrators have Time to make the Award at any Time before the said Day; and so no Time is limited for the Umpire, and so his Power merely void. *1 Rol. Abr. 261.*

10. In Debt upon an Obligation, conditioned to perform an Award, so that it be made at or before the Feast of *St. Michael*; and if they made none, then to perform the Umpirage of *J. S.* so that it be made at or before the same Feast of *St. Michael*: The Defendant pleads, that the Arbitrators made no Award, and that the Umpire made no Umpirage: The Plaintiff replies, that the Arbitrators made no Award, but that the Umpire made an Umpirage; and sets it forth, and assigns a Breach, to which the Defendant demurred; and it was held by *Kelynge, Twisden,* and *Rainsford*, (*Moreton* doubting) that the Submission to the Umpire was void, but if the Submission had been to Arbitrators, and if they had made none, then to such an Umpire

Umpire as they should name, it might have been good; for by their Election of an Umpire, they had waived the Submission to themselves; but as this Case is, if the Arbitrators had made one Award, and the Umpire another, which of them should have been performed? Between *Copping* and *Harriard*, 1 *Lev.* 285.

11. In the same Case reported in 2 *Saund.* 132. it is held by all the Court (except *Twisden*) that if the Plaintiff had averred, that the Arbitrators *non Potuerunt*, or that it was impossible, one of the Arbitrators dying, &c. or if he had shewed that they disagreed, and declared they would meddle no more, the Award made by the Umpire had been good.

12. If the Condition of an Obligation be, to stand to the Award of *J. S.* and *J. D.* so as the Award be made and delivered to morrow; and if they cannot then agree, then to stand to the Umpirage of *J. N.* so he makes and delivers his Umpirage to morrow, or next Day after that; in this Case, though it be alledged that the Arbitrators could not agree upon any Award, and that they *Denegassent* and *deseruissent* to make any Award; yet the Umpire cannot make his Umpirage upon the Morrow; for that although the Arbitrators could not agree, and though they have deserted it, and denied, yet at any Time after, during the said Day, they might have made an Award; and the Words are, *If they cannot then agree*, by which is intended all the Day, till the last Moment thereof; and this is a Condition precedent

to the Power of the Umpire, which extends to all the Day; and no Act of the Arbitrator can hasten this beyond the Power; and if the Arbitrators and Umpire should have Power at the same Time, and both should make two several Awards, this would bring great Doubt and Confusion to the Court, which of them would be good. *1 Rol. Abr. 262.*

13. But in *2 Jones 168.* the same Point coming in Question, the Court there held, that if the Arbitrators, upon such Submission, make an Award, it shall be good; but if not, then the Award of the Umpire shall stand, and there is no Confusion in the Concurrence of Authority; for the Umpire hath not an absolute concurring Authority, but conditionally only, if the Arbitrators do not make an Award.

14. But by the above Cases, and by the express Authority of my Lord *Holt*, who says positively in *1 Salk. 72.* that if the Umpire be named in the Submission, he cannot make his Umpirage before the Time given to the Arbitrators to make their Award in be expired; it seems the better Opinion, that the Umpire can have no Power till the Time allowed the Arbitrators be expired, especially if he be named in the Submission by the Parties; but if the Arbitrators have Power to name him, it may be otherwise, as appears by the following Cases.

15. If Two submit themselves to Two others, with a Clause, nevertheless if they do not end it within ten Days, they shall nominate another that shall end it within the

the ten Days; by which they appoint another, who makes an Award within the ten Days; this is good, because it is the Appointment of the Parties, and their special Agreement; and by making the Umpire, the Authority of the Arbitrator determines. *Godb. 241. S. P. agreed by the whole Court. 1 Sid. 428.*

16. If *A.* and *B.* submit themselves, by Condition of an Obligation, to the Award of *J. S. ita quod* the Award be made *super*, or before the last Day of *May* next ensuing; and if he does not make any Award *super*, or before the said last Day of *May*; then if they stand to the Award of such Person, who shall be elected by the Arbitrator to be Umpire, to be made before the tenth Day of *June* after; in this Case, if the last Day of *May* the Arbitrator, not having made any Award, elects an Umpire, who makes his Umpirage before the tenth Day of *June*, this is a good Umpirage; for though the Arbitrator had all the last Day of *May* to make his Award; yet he might the same Day elect an Umpire, when he perceived that he could not make any Award himself; and when it appears after that he relinquished, and did not make any Award after naming the Umpire. *1 Rol. Abr. 262. S. P. adjudged Cro. Car. 263. and the same Point cited, and agreed by the Court. 2 Saund. 133.*

17. The same Point is likewise resolved in *Raym. 206.* and by two Judges it is there held, that notwithstanding the Umpire cannot make his Umpirage the said last Day of *May*, for the Power of the Arbitrator is not extin-

extinguished by his chusing an Umpire.
1 *Lutw.* 544. S. P.

18. A Submission was to two, so as they made their Award on or before the 29th of *June*; and if they made no Award, chuse an Umpire; they chose an Umpire on the 29th; and Exception was taken that they had the whole 29th to make their Award. *Et per Holt*, Chief Justice, if there be a Submission to two, so as they make their Award before *Midsummer*, and if they cannot agree, then to such Umpire as they shall chuse, so as he make his Umpirage before *Midsummer*, and an Umpire is chose accordingly; this is good, and so will his Umpirage be, if made; because the Arbitrators had determined their Power before, by chusing an Umpire. But he said, that if the Umpire be named in the Submission, he cannot make his Umpirage before the Time given the Arbitrators to make their Award in be expired. Between *Mitchell and Harris*, 1 *Salk.* 71.

19. But my Lord *Holt* seems to be of another Opinion in the Case of *Reynolds and Gray*, 1 *Salk.* 70. where he expressly says, That if Arbitrators chuse an Umpire before the Time allowed them is expired, 'tis *ipso facto* void, though they absolutely resolve to make no Award themselves.

20. And there is a Case which seems to favour this last Opinion; where in Debt upon a Bond to perform an Award, so that it be made before, or upon the 22d Day of *December*, or to choose an Umpire upon a Breach assigned, an Exception was taken that there was no good Award, because the
Arbi-

Arbitrators were to make it before, or upon the 22d Day of *December*; and if they could not agree, to choose an Umpire, and the Award set forth was made by an Umpire chosen after the 22d Day of *December*, which the Arbitrators had not Power by the Submission to choose; *sed non allocatur*, because they might have made their Award upon the 22d Day of *December*, and therefore could not choose an Umpire till afterwards, for their Power was determined only as to the making an Award. Between *Adams* and *Adams*, 2 *Mod.* 168.

21. If the Condition of an Obligation be to stand to the Award of *A.* and *B.* so as the said Award be made before such a Day, and if they make no Award, then to stand to the Award of such Umpire as the said *A.* and *B.* shall nominate, so as the said Umpire do make his Umpirage before another Day, and the Arbitrators before the first Day make no Award, but afterwards name *C.* to be Umpire, who thereupon immediately refuses, and the Arbitrators afterwards nominate *D.* who before the last Day makes an Award; this is a good Award; for the Nomination of *C.* to be Umpire, did not make him so, but when he refused, it amounted to no more than a bare Proposal to him; and the Form of Pleading always is *suscepto super se onere Arbitri*, so that it is the Acceptance makes him Umpire. *Hill.* 1 *Ed.* 2 *Will.* *Ed.* *Mar.* between *Tryppit* and *Eyres*, 2 *Vent.* 113, 114. Adjudged by *Powel*, *Rokeby* and *Ventris*, contra *Polexfin*, Chief Justice; who held, that *C.* might have proceeded notwithstanding

The Compleat Arbitrator.

standing his Refusal, and there could not be two concurrent Jurisdictions in several Persons. But see the following Case, which seems *contra*.

22. A Motion was made for an Attachment, for not performing an Umpirage of *H.* chosen by Arbitrators, who were appointed by Rule of Court; and it was held by *Holt*, Chief Justice, That if Arbitrators chuse an Umpire before the Time allowed them for their Award is expired, 'tis *ipso facto* void, though they absolutely resolve to make no Award themselves; and that when their Time is expired, if the Arbitrators chuse one, their Authority is executed, and they cannot revoke or chuse again, though the Person elect refuse to accept; *aliter*, if they chuse their Umpire upon Condition that he does accept the Umpirage, for then he is not Umpire unless he does accept it: But *Rookesby* doubted whether an exprefs Condition would make a Difference, because it seemed to be implied. 1 *Salk.* 70.

CHAP.

CHAP. VI.

Of the Award.

AN Award or Arbitrament is the Sentence or the Decree pronounced by the Arbitrators, and published when they have heard all Parties.

There are five Things incident to every Award or Arbitrament, *viz.* 1. Matter of Submission. 2. The Submission. 3. Parties to the Submission. 4. The Arbitrators. 5. The Making and Delivery of the Award. And though we have treated of the four first of these in the foregoing Chapters, yet as there are many Things relating to them which interfere with the Award, and for which the Award has been held void, it was necessary, for Method sake, to reserve them for this Chapter, that by ranging them under the following *Sections*, any Person may the more readily find for what Causes Awards have been held void, and what Exceptions have been taken, though disallowed.

And as our Courts have lately been more liberal in their Constructions of Awards, in expounding them according to the Intent of the Arbitrators, than formerly, I have, as near as possible, set down the Cases according to the Series of Time in which they were resolved.

Sect. I. Awards must be made according to the Submission, with respect to the Things submitted.

Sect. II. Awards must be made according to the Submission, with respect to the Persons.

Sect. III. Awards must be made according to the Submission, with respect to the Making, Signing and Sealing, Delibering, and other Circumstances.

Sect. IV. An Award ought to be certain.

Sect. V. That it be final, so as to make an End of the Matters in Controversy.

Sect. VI. An Award must appoint the doing of something Beneficial to each Party.

Sect. VII. The Thing awarded to be done, must be reasonable, possible and lawful.

Sect. IX.

Sect. VIII. Awards void in Part, and good for the rest, and void in Part, void for the Whole.

Sect. IX. Concerning the Performance of the Award.

Sect. X. Precedents of different Kinds of Awards.

S E C T. I.

Awards must be made according to the Submission, with respect to the Things submitted.

1. **I**T was always a Rule to expound Awards according to the Intent of the Arbitrators, and not literally. 10 Co. 57.

2. But though this Rule seems to be as well established as any relating to Awards, yet great Difficulties and Doubts have arisen upon finding out the Intent of the Arbitrators; and in former Times it was held to be ^{21 E. 4. 39. b.} strictly necessary, that the Words of the Arbitrators be consonant to Law; that is, with respect to the Award and Submission, that neither the Matter nor Words in the one, differ from those in the other.

3. And it hath been resolved, that an Averment shall not be allowed to shew the Intent of the Arbitrators, if it be not expressed

pressed in the Award, either directly or by Words tantamount. *Dyer 242.*

4. But in later Times I cannot find that our Courts have been so strict in tying up the Arbitrators, and obliging them in all Particulars to make the Award agree with the Submission; on the contrary, the Tenor of our more modern Resolutions shew, that an Agreement in Substance is sufficient; and so far are the Niceties and Difficulties, which attended this Matter, remedied, that it is now a stated Rule, *That in all Awards that are said to be de & sup. Premiss. that if the Words used in them be in their own Nature more comprehensive, and so extensive to Things not within the Submission, yet they shall be intended that there was no other Matter between the Parties for them to lay hold on, but what was submitted, if the contrary be not shewn. So e converso, if the Words are more narrow, and less comprehensive, than to take in all the Matter of Submission, yet it shall be intended that no more was in Controversy, than what the Words naturally comprehend, if the contrary be not likewise shewn.*

5. If the Condition of an Obligation be, to perform an Award between the Parties of such and such Things, if the Arbitrators award a Thing to be done meerly out of the Submission, he is not bound to perform it. *8 H. 6. 18.*

6. If one be chosen to make an Award upon one Thing, and he makes it upon another, the Arbitrament is void; as if the Submission be of all Things in Variance betwixt the

the Parties, and the Award is of Things not in Variance. *Plow.* 396.

6. If the Submission be of the Right and Interest of the Land, and the Award is concerning the Profits only of the Land; or if the Submission be of the Manor of *D.* and the Award is made of the Manor of *S.* it is not good. *Dyer* 242.

7. If the Submission be of all Actions, the Arbitrators cannot make an Award of such Things of which the Parties have only Cause of Action, because it is not within the Submission. 36 *H. 6.* 11. *b.* *Co. Lit.* 285.

8. But it is otherwise if the Submission is of all Actions and Quarrels. *Ibidem.*

9. The most general and extensive Word which can be used, is the Word *Demands*; therefore if there is a Submission of all Demands, the Arbitrators may make an Award of all Matters concerning the Title of Land, *3c. Keilw.* 99.

10. Upon a Submission of all *Differences* only, or of all *Injuries*, *Quære* of what Things may the Arbitrators make their Award; and see *Style* 170. 3 *Bulst.* 311.

11. There was a Submission to Arbitrament by the Husband, for all Controversies concerning Money laid out for the Wife, *at her Request*, and the Arbitrators awarded, That the Husband shall pay 340 *l.* for all Sums laid out for the *Feme*, (omitting at her Request) and the Court held, that this being for more than was submitted, that the Award was void. Between *Waters* and *Bridges*, *Cro. Jac.* 639, 640.

The Compleat Arbitrator.

12. If there be a Controversy between the Parson and Parishioners, whether Tithes should be paid in *Specie* or not, and they reciting the said Controversy, submit themselves to the Award of *J. S.* for all Matters, as well Spiritual as Temporal, from the Beginning of the World to the present Day; and the Arbitrator awards, That the Parson shall have 7 *l.* for the Tithes due before the Submission, and that the Parishioners shall pay 4 *l.* *per Annum* for the Tithes which shall grow due after; this is a good Award, for the Right of the Tithes was in Question, and by these Words submitted to Arbitrament, as well as the Possession of them. *1 Rol. Abr. 246.*

13. If *A.* and *B.* submit themselves to the Award of *J. S.* touching a Suit depending between them in an *Ejectione Firme*, *J. S.* upon this Submission, cannot make an Award of the Land for which the Action is brought. *1 Rol. Abr. 246.*

14. If the Submission be of a Term for Years, and all thereupon depending, and the Award is, That one shall pay to the other 10 *l.* for the Rent that shall become due upon this Term at *Michaelmas* next ensuing; this is no good Award, for the Rent is not within the Submission, in as much as the Rent may be extinct by Surrender, Eviction, &c. before *Michaelmas*. *1 Rol. Abr. 242. Pl. 3. 10 Jac. 1.*

15. But if the Condition of an Obligation be, to stand to the Award of *J. S.* and he awards, That one shall enjoy a certain House, paying to the other 20 *l.* yearly, if the Rent

is not paid, the Condition is broke. *Cro. Eliz.* 211. *Trin.* 32 *Eliz.*

16. So if an Award be, that *A.* shall make a Lease to *B.* and that for this Lease *B.* shall pay to *A.* a certain Sum yearly; this is a good Award. *Moor* 3. *Pl.* 8.

Note, That from the above Cases it appears, that regularly the Award must agree in all Instances with the Submission, with respect to the Things submitted, especially if there be Mention made of the Matters in Controversy, and the Submission be conditional, or so that it be made of all the Premises; for where in such a Submission a Matter is particularly mentioned, it must be particularly determined. *Vide Hard.* 45. and *vide Sect.* 9. of this Chapter, where Awards may be void for Part, and good for the rest.

And though it be held necessary in most Cases, that Things particularly mentioned, should be particularly determined, and that no Award should be made of Things not mentioned in the Submission; yet the Arbitrators may make an Award of Things which depend on the Principal, that is, of such Things which have a Relation or Dependance on the Things contained in the Submission, though not expressed therein.

17. As if the Submission be of the Title and Possession of Land, the Arbitrators may make an Award of the Evidences and Charters concerning the Land. 8 *H.* 6. 18. *b.*

18. So if there be a Submission of all Debts, the Arbitrators may award a Release of all Bonds, Judgments, Executions and Extents; for, as by the Submission the Arbitrators

The Compleat Arbitrator.

have Power to make an Award concerning the Debts themselves, so *ex consequenti* they have Power to award a Release of the Specialties, Judgments, &c. by which the said Debts are due. *Trin. 22 Car. 2. between Roberts and Marriot, 2 Sand. 190.*

And in the following Cases, though the Rule was admitted, *that the Award should be made according to the Submission, with respect to the Things submitted*; yet the Awards made in them have been by Construction held to be good.

19. As, if the Submission be of all Matters between the Parties, and the Award is made of all *præter* one Obligation, and of this the Award is, that it shall stand, this is a good Award of all, for he is not bound to discharge this without Cause, and it shall be intended there was no Cause. *Hill. 14 Jac. 1. between Berry and Penrin, in Cam' Scac' Cro. Jac. 400.*

20. If *A.* and *B.* submit all Controversies of Wood and Underwoods, and all Quarrels and Suits between them, *ita quod*, &c. and the Award is, That *A.* shall have the Underwoods, and that he shall pay to *B.* 50 *l.* and says nothing of the Woods, but awards further, That all manner of Actions, Quarrels, &c. between them, shall cease; this is a good Award of all, because the Beginning of the Award was, *We do award of the Pre-misses*, and also the Award is of Actions, &c. *Mich. 5 Jac. 1. between Humfry and Wiburn, 1 Rol. Abr. 257.*

21. If a Submission be of all Controversies, Doubts, &c. had, made, moved or stirred

stirred between the Parties, from the Beginning of the World until the Day of the Date of the Bond, and the Arbitrators award that one shall pay 10 l. to the other, which appears, by his Confession, that he hath received; and if it shall appear within one Month, and due Proof thereof shall be made, that he hath received more than this, which he hath so confessed, then he shall pay that also; though this last Part be void, yet the Award is good; though it was objected, that all Doubts are referred, and the Condition is *ita quod fiat de Premissis*, and so they have not made an end of all Doubts; for it appears, that the Arbitrators doubted of this, whether more was due or not: But *per Cur'* adjudged good, because it is not averred that this was a Doubt moved or stirred between the Parties at the Time of the Submission; for perhaps this Doubt arose between the Arbitrators after the Submission, and it shall not be intended without an Averment, that this was a Doubt at the Time of the Submission; and this was made *in majorem Cautelam* by the Arbitrators. 9 Car. 1. 1 Rol. Abr. 257.

22. If the Arbitrators reciting, That whereas there were several Differences between the Plaintiff and the Defendant, concerning a House and divers Elms, and Arrears of Rent; they, to make a final End of all, award the Defendant to pay to the Plaintiff 4 l. for all the said Arrears of Rent; this is a good Award; for either it shall be intended that the other Matters were otherwise determined, or, when the Award says,

in byrom
to
H 3

The Compleat Arbitrator.

to end all Differences, it shall be intended that the 4th l. was given in Satisfaction of all. Between *Hopper* and *Hachet*, 16 Car. 2. 1 Lev. 133. See *Hard.* 399. where this Point is doubted.

23. If two submit all Controversies the 4th of May, to the Award of J. S. *ita quod Arbitrium fiat de Premissis*, and J. S. makes an Award *de Premissis* of all Controversies till the 1st of May, though here he hath not made any Award for Part of the Time submitted, but the Award is shorter, yet because it is made *de Premissis*, it shall not be intended that there were any mean Controversies between them, between the 1st of May and the 4th of May, unless this be shewn of the other Part, and therefore the Award is good enough. 1 *Rok. Abr.* 257.

It was held formerly, that the Awarding a Thing not mentioned in the Submission, in Satisfaction of a Trespass, &c. submitted, was not good.

24. As where an Award was, That one should give his Horse in Satisfaction, &c. it was held, that the Parry was not bound to perform it, because it was out of the Submission, for he may as well award him to give his Gown, or other collateral Matter; but Money is *Mensura rerum*, and therefore may be awarded to be paid in Satisfaction of any Thing. 9 E. 4. 44.

25. If two submit to the Award of J. S. of all Matters between them till the Submission, and then each of them promises the other to perform the Award, and J. S. awards, Whereas one was bound in an Obligation

gation to the other (which was made after the Submission, and before the Award) that the Obligee should deliver up the Obligation to the other, in full Satisfaction of all Matters between them, (and awards further in such Manner, that all was good, if the aforesaid Award was good) though this Obligation be out of the Submission, yet he is bound to perform it, because it is to be given in Satisfaction of Matters contained within the Submission; as a Horse or Money may be given in Satisfaction, though they are not within the Submission: Adjudged 15 Jac. 1. 1 Rol. Abr. 243. but the Reporter makes a *Quere* of this, and says, That this is a Thing in Action between them, and out of the Submission, and so not like the Case of the Horse, unless the Horse was in Dispute between them after the Submission.

26. There are Variety of Cases in the old Books, where it has been held, that an Award of a collateral Thing in Satisfaction is not good, but the Reason in those Cases, is not because the Thing awarded was not mentioned in the Submission, (for of this there is no Doubt now) but because the Party had no Remedy to enforce the Performance of the Award; neither could the Defendant plead it barely to any Action brought, without pleading a Performance likewise. 17 E. 4. 8. a. *Keilw.* 121. 9 Co. 79.

27. But the Law seems to be held otherwise now, and that an Arbitrament is a good Plea, whether it be of Money, or a collateral Thing, as a Hat or a Horse; and the Reason is, because the Submission is a mutual

tual Promise, upon which an Action lies; and Performance need not be averred in either Case, for the Remedy is alike, as appears by the following Case.

28. The Plaintiff brought an Action of Trespass for an Assault, Battery and Wounding; and the Defendant, as to the *Vi & Armis*, pleads Not guilty, and as to the Residue pleads an Award made, *viz.* That the Defendant should provide *two Fowls* at his Mansion-House in *Old Bedlam* in *London*, to be eat by the Plaintiff and his Friends, &c. in Satisfaction of the said Trespass, &c. And it was objected, among other Things, That this was not a good Bar without Execution, because it was of a collateral Thing, of which the Plaintiff could not have an Action; yet the Court held, that as a Submission mutual, though not by Bond, was of late resolved to be an actual Promise of Performance, it need not be averred executed, because the Party had a Remedy for the Thing awarded; and the Plea was held good. Between *Boisloe* and *Baily*, *Trin. 3 Ann. 6 Mod. 221, 222. 1 Salk. 76. S. C.* where it is said, that *Powel*, Justice, was of a contrary Opinion. See the last Section of this Chapter.

S E C T. II.

Awards must be made according to the Submission, with respect to the Persons.

AS by the foregoing Section it appears, that it is regularly necessary that the Award should be made according to the Submission, with respect to the Things submitted; so in this Section it will appear to be necessary, that the Award be made according to the Submission, with respect to the Persons any way concerned; and herein it will be most proper, for Method sake, to consider:

- I. The Persons actually named in the Submission, and how the Award is to be made as to them.**
- II. When Copartners and others submit, not only for themselves, but likewise for others, or for others barely, how the Award is to be made.**
- III. How far an Award, which appoints the doing of a Thing by a Stranger, or a Person not named in the Submission, is good or not.**
- IV. How**

IV. How far an Award, which appoints the doing of a Thing to a Stranger, be good or not.

V. How the Award must be made according to the Submission, where there are several Arbitrators.

1st. *As to the Persons actually named in the Submission, and how the Award is to be made as to them.*

1. **I**F three Persons, *scilicet* A. B. and C. of the one Part, and D. of the other Part, submit themselves to the Award of J. S. *Ita quod*, &c. and he makes an Award between A. and B. of the one Part, and D. of the other Part, and makes no Award between C. and D. this is not good, because the Submission is conditional, and it is recited in the Submission, that there were divers Controversies between them all. 14 Car. 1. 1 Rol. Abr. 261.

2. But if A. and B. of the one Part, and C. of the other Part, submit themselves to the Award of J. S. of all Matters between them, J. S. may make an Award of any Matter between A. only and C. though B. hath nothing to do therewith, for the Submission shall be taken distributively, 9 Car. 1. 1 Rol. Abr. 246. But Note, That it does not appear that the Submission was conditional in this Case, as it was in the precedent.

3. If

3. If *A.* and *B.* of the one Part, and *C.* of the other Part, submit to the Award of *S.* who awards that *B.* shall pay a certain Sum of Money unto *C.* in Satisfaction of all Differences between *A.* and *B.* of the one Part, and *C.* of the other Part; this is a void Award as to *A.* and he is not concerned therein, for the Money paid by one can be no Satisfaction for the other. *Mich.* 1655. between *Morden* and *Hart*, *Style* 471.

4. In Debt upon an Obligation conditioned, That whereas the Defendant, by himself and his Son, had submitted to the Award of *A. B.* to perform it, so that the Award be ready, &c. before the 1st of *May*, and if they made none, to such Umpire as they should chuse to be made the first of *June*; the Defendant Pleads no Award nor Umpirage; the Plaintiff confesses no Award by the Arbitrators, but says, That the Umpire awarded the Plaintiff to seal to the Defendant three Obligations, and the Defendant to pay to the Plaintiff 100 *l.* which he had not done; upon a Demurrer, one of the Exceptions (and for which the Award was held void) was, That nothing is awarded as to the Son, and it ought to be to every one for some Part, or else 'tis void in the Whole. *Mich.* 16 *Car.* 2. between *Bean* and *Newbury*, 1 *Lev.* 139, 140.

5. But it is clear, that if there be three or more Parties, and the Submission is, so that the Award be made between them, or any of them, the Arbitrators may make an Award between any two of them, without

mention

The Compleat Arbitrator.

mentioning any Thing concerning the others. See 10 Co. *Osborne's Case*.

6. So where the Defendant and his Wife submitted on one Part, and the Plaintiff on the other, *so that the Award be made betwixt them, or any of them*, it was held, That the Award made in this Case was good, tho' no Mention was made at all of the Wife. *Hard. 399.*

7. If the Father and Son (the Son being an Infant) submit to an Award (admitting the Submission of an Infant, or of his Father on his Behalf, is void) yet the Submission *quoad* the Father is good, and the Arbitrators may make an Award *quoad* him and the other Party alone. 3 Lev. 17.

2dly, *When Copartners and others submit, not only for themselves, but likewise for others, or for others barely, how the Award is to be made.*

1. Though one Person may submit for another, or one Copartner may (as is frequent) submit for himself and other Copartners, yet Care must be taken how the Submission, as well as the Award, be made, as appears by the following Cases.

2. If *A.* and *B.* submit to the Award of *J. S.* concerning all Differences between the said Parties, and *J. S.* makes an Award between *A.* in the Name, and for the Behalf of *C.* of the one Part, and *B.* of the other Part, *viz.* that *B.* shall, &c. this is a void Award, because contrary to the Submission. *N. Bendl. 107.*

3. If

3. If *A.* and *B.* Merchants of a Ship, of the one Part, and *C.* and *D.* Part-Owners and Mariners of the Ship, of the other Part, submit to the Award of *J. S.* of all Matters concerning a Prize taken by Reprisal, and *A.* and *B.* enter into an Obligation to perform the Award, and *J. S.* awards, That *A.* and *B.* the Merchants, shall pay 1000 *l.* to *C.* and *D.* for the Use of them and the Residue of the Part-Owners and Mariners; this is a good Award; for if *A.* and *B.* do not pay the Money, the Part-Owners and Mariners may have an Action of Debt against them, in as much as all have submitted to the Award; and if they pay the Money to *C.* and *D.* to the Use of them and the Residue of the Part-Owners and Mariners, tho' it be not limited how much each one shall have, yet in as much as they have jointly submitted, it may be jointly awarded to be paid to them; and though it be to be paid to *C.* and *D.* for the Use of them and the Residue of the Part-Owners and Mariners, and though it was objected, That the Residue of the Part-Owners and Mariners had no Remedy for their Part but by Action; yet this is a good Award, for it is a good Award, to award that one shall enter into an Obligation to pay a Sum, which is but a Thing in Action; and the rest of the Part-Owners and Mariners may have Remedy, at least in Chancery, against *C.* and *D.* if not at Common Law. Between *Wood, &c.* and *Thompson, &c.* Mich. 24 Car. 1. 1 Rol. Abr. 249.

4. If

The Compleat Arbitrator.

4. If one Partner, on the Behalf of himself and the other Partner, submits, &c. and Promises to perform the Award, and thereupon the Arbitrator awards them to pay Money, though the other Partner is not bound hereby; yet he that submitted, &c. for himself and his Partner, must perform it. 2 *Mod.* 227, 228.

5. If there be a Controversy for a certain Thing between *A.* and *B.* of the one Part, and *C. D.* and *E.* of the other Part; and *C.* in Consideration of 6*d.* given him by *A.* and *B.* submits the Matter for himself and *D.* and *E.* and assumes to stand to the Award; and *A.* and *B.* submit of the other Part; and the Arbitrators award that *C.* shall pay so much to *A.* and *B.* in Satisfaction of the Controversy; this is a good Award, and *C.* is bound to perform it, though it concerns Two, Strangers to the Submission, for *C.* hath undertaken for them. *Hill.* 14 *Jac.* 1. between *Bullock* and *Dalby*, 1 *Roll. Abr.* 244.

As there may be several Parties to an Arbitration, so they may be jointly bound, though in several Bonds, as appears by the following Case.

6. As, if there be a Controversy concerning certain Lands, between *A. B.* and *C.* and thereupon *A.* of the one Part, and *B.* and *C.* of the other Part, submit to the Award of *J. S.* and thereupon *A.* binds himself in an Obligation of 1000*l.* to *B.* and *C.* with Condition to perform the said Award of *J. S.* touching this; and *B.* and *C.* because they would not be bound the one for the other, enter into several Obligations of

1000*l.*

1000 l. a-piece to *A.* with several Conditions, for the Performance of the Award of the said *J. S.* and the Arbitrators award that *A.* shall make a Release of all his Right in the Land to *B.* and *C.* and in Consideration thereof *B.* and *C.* should pay 300 l. to *A.* in an Action of Debt by *A.* against *B.* upon his Obligation for Non-performance of the Award; this is a good Award; and Breach assigned, that *nec B. nec C.* paid the 300 l. at the Time appointed, according to the Award; all this Matter being disclosed in Pleading; for upon all the Matter shewn it appears, that *C.* is no Stranger to the Award; for he and *B.* submitted themselves jointly; and though they entred into several Obligations, yet this did not make *C.* any Stranger to the Award. Between *Hais* and *Hais*, Cro. Car. 433.

And note, That when ever one Person submits for another, it must carefully be observed, that whatever is awarded to be done, must appear to be for the Advantage of the Person for whose Account the Submission was.

As upon a Submission by *A.* for himself on the one Part, and *B.* of the other, on the Behalf of *C.* the Arbitrators awarded, that *B.* on the Behalf of *C.* should pay unto *A.* 300 l. and that *A.* should execute a general Release unto *B.* and it was held, that this Award was void, because there was nothing awarded on the Part of *C.* who was the Principal Person concerned, for the Differences were between him and *A.* and therefore the Awarding that *A.* shall release to *B.* signified

The Compleat Arbitrator.

signified nothing, for C. will, notwithstanding such Release, continue liable to the Demands of A. *Trin. 9 W. 3. between Bacon and Dubarry, Carth. 412.*

3dly, *How far an Award, which appoints the doing of a Thing by a Stranger, or a Person not named in the Submission, is good, or not.*

1. We find it often said in our Books, that where an Award appoints a Thing to be done by a Person who is a *Stranger* to the Submission, that the Award is void; tho' this be regularly true, yet it has been held to be no otherwise so than with this Distinction, *viz.* where the Party has no Remedy to compel the Stranger, or where the Stranger is to do a judicial and not a ministerial Act; for in both the last Instances, the Awards made, and appointing a Thing to be done by a Stranger, have been held good, as appears by several Cases.

2. If the Arbitrators award, that one of the Parties shall procure a Stranger to do a Thing, and he hath no Means by Law to compel the Stranger to do it, the Award is void; but if he hath any Means to compel the Stranger to do it, either by the Common Law, or in Chancery, he is bound hereby. *17 E. 4. 5.*

3. If the Condition be to stand to the Award, &c. and the Award is, that one shall pay 15 *l.* to the other, and *J. S.* a Stranger, shall enter into an Obligation to pay it at a certain Day; this Award is void as to the Entry into an Obligation by a Stranger, and
the

the Obligor is not bound to perform it, because it is out of the Submission, and the Party cannot by Intendment procure *J. S.* to enter into such an Obligation. Between *Moor and Beedle*, 10 Co. 131.

4. If a Submission be touching a Title of Land between *A.* and *B.* and the Arbitrators award that *A.* and his Wife, and Son and Heir apparent, by the Procurement of *A.* shall pass such Assurance of the Land to *B.* as *B.* shall require, this is a void Award as to the Wife and Son, because they are Strangers to the Award. Between *Barney and Fairchild*, 13 Car. 1. 1 Rol. Abr. 248.

5. If there be an Award that one shall acquit the other of an Obligation of 200 *l.* in which they are bound to *B.* for Payment of 105 *l.* this is a good Award; for though he cannot compel *B.* being a Stranger, to deliver up the Obligation, or to make a Release by the Common Law; yet if the Obligation was not forfeited, he might pay the 105 *l.* to *B.* at the Day, and this would acquit the other; and if the Obligation was forfeited, yet he might pay the Penalty to *B.* and so acquit the other; or he might on Satisfaction given compel *B.* in a Court of Equity, to deliver up the Obligation; or to make a Release. 15 Car. 1. between *Barfey* and *Clipsbam*, 1 Rol. Abr. 242.

But note, That though regularly that Part of the Award, which appoints a Thing to be done by a Stranger, and for which the Party has no Remedy to compel him, be void, yet it shall be good as to himself.

6. As if the Condition of an Obligation be, to perform an Award, and the Award is, that the Obligor and a Stranger shall pay to the other Party 10 l. though this is void as to the Stranger, yet it is good as to the Obligor, and he is bound to perform it. Between *Gray and Wicker*, 1 *Rol. Abr.* 244.

7. If in Debt upon an Obligation, conditioned for the Performance of an Award, the Defendant shews, that the Arbitrators did make an Award, that the Defendant, before such a Day, should pay to the Plaintiff 100 l. or otherwise should procure one *A.* being a Stranger, to be bound to the Plaintiff for the Payment of 12 l. *per Annum* to the Plaintiff for his Life; and the Defendant pleads, that he hath performed the said Award; and the Plaintiff replies, that the Defendant hath not paid the said 100 l. without saying, nor hath procured *A.* &c. yet this is a good Replication, for the Award as to that Part is merely void, and therefore the Plaintiff need not take Notice thereof. 29 *Eliz.* between *Wilmen and Oldfeild*, 1 *Leon.* 304.

8. So, if the Award be, that the Defendant, together with a Stranger, shall enter into a Bond, in the Assignment of a Breach, the Plaintiff must not say, that the Defendant and a Stranger did not enter into a Bond. By three Judges against Two. But the other Two held that the Plaintiff should have shewn the whole Award, and thereupon the Law would have adjudged one Part void, and not to have been done. *Vide* 1 *Godb.* 165. 2 *Rol. Rep.* 46.

9. An

9. An Award that one shall be bound with Sureties, is void as to the Sureties. 18

E. 4. 23.

10. In an *Assumpsit* to perform an Award, by which the Arbitrator awarded the Defendant should be bound with sufficient Surety to the Plaintiff, for the Payment of a certain Sum of Money, and for Breach assigns, that the Defendant did not become bound to the Plaintiff *modo & forma*, as was awarded; and upon Demurrer it was adjudged, that though the Award was void as to the Finding of Surety, 'twas good as to the Defendant himself, and the Breach well assigned, that he did not become bound; and the *Modo & forma* only shall relate to himself, and not to the Surety. *Pasch. 23 Car. 2.* between *Coke* and *Whorwood*, 2 Lev. 6.

11. In an *Assumpsit* it was recited, that several Differences had been between the Plaintiff and Defendant, (but does not say touching what Matters they were in Difference) which were submitted to the Award of J. S. who did award *de & super Præmissis*, that the Defendant should pay the Plaintiff 30 l. in Satisfaction of all Sums due to him out of the Estate of one *Woolly*. After Verdict for the Plaintiff, Judgment was staid; but at last, after divers Motions, Judgment was entered for the Defendant, because it does not appear that the Defendant is Executor, Administrator, or Trustee for *Woolly*; it does not appear he had any Thing of *Woolly's*, or that he submitted on Behalf of him, and so no Consideration why he should be charged for the Estate of *Woolly*. Be-

The Compleat Arbitrator.

tween *Adams and Statham*, *Mich. 30 Car. 2.*
2 Lev. 235.

12. An Award, as has been before observed, may be good, though a Thing is to be done by a Stranger, where such Stranger is used as an Instrument, or is to do a ministerial Act; but it cannot be a judicial Act, for then it would be void.

13. As if an Award be, that one shall pay 10*l.* to the other, and in Surety of Payment he shall be bound in an Obligation to the other, by the Advice of his Counsel; this is good, for it is incident and pursuant, that his Counsel should make the Payment sure. *19 E. 4. 1.*

14. So if there be an Award, that one Party shall pay 10*l.* to the other, and that the other shall make a general Release, as fully and beneficially as Counsel shall advise; this is a good Award; for the Counsel hereby hath not any Power to do a judicial Act, but a ministerial only; for the Arbitrator hath directed the Extent of the Release, *scilicet* to be general, and the Counsel are only to make it as strong in Law as they can. *Triu. 1650. between Cater and Startut, 1 Rol. Abr. 251.*

15. An Award to pay 20*l.* for a Horse, if *J. S.* shall say it is worth so much, is good, because a ministerial Act only is referred to *J. S. per* two Judges. *2 Rol. Rep. 214.* but *quære*, and *vide Palm. 147.* where it is said to be a judicial Act.

16. But in Debt upon an Obligation, conditioned for the Performance of an Award to be made, &c. the Plaintiff shewed an Award,

ward, that the Defendant should release all Actions, &c. *ut talis advisaret, &c.* and it was adjudged to be a void Arbitrament to refer it to the Act of another, who was to do a judicial Act; and that therefore the Defendant is not bound to perform it. Between *Emery and Emery*, 41 *Eliz. Cro. Eliz.* 726.

17. So an Award, that one of the Parties should leave so many Trees for House-bote, &c. as the Arbitrators, upon Advice with Counsel at the next Affizes, should appoint, is void; but *note*, that in this last Case it is not said to be void upon the Act, which is to be done by a Stranger; but because the Arbitrators cannot reserve any future Power to themselves. *Cro. Jac.* 315.

18. An Award to pay such Costs as a Prothonotary shall tax, is good. 1 *Sid.* 258.

19. An Award that one of the Parties shall surrender his Copyhold into the Hands of Two of the Tenants of the Manor, who shall present it, &c. is a good Award, tho' done to Strangers, who are not compellable, because they are to be used but as Instruments. *Mich.* 13. *Jac.* 1. between *Coote and Pooley*, 1 *Roll. Abr.* 247.

20. So it is a good Award, that one of the Parties shall make a Deed of Feoffment, with a Letter of Attorney, to *J. S.* to make Livery, for then *J. S.* is to be used but as an Instrument. *Ibid.*

21. So an Award, that one of the Parties shall levy a Fine before the Justices *de Banco*, before such a Day, is good; though this cannot

not be done without the Act of the Court.
19 E. 4. 1.

22. But it is said, that if the Award be, that one shall command the Justices *de Banco*, to make him levy a Fine before a certain Day; this is void, because it is not in his Power. *Ibid.*

23. And as the Arbitrators cannot award that a Stranger shall do any one judicial Act; *e fortiori* they cannot award that the Parties shall stand to the Award of another.
8 E. 4. 11. a.

24. But if a Stranger had made an Arbitrament before between the said Parties, an Award to stand to such an Arbitrament of the Stranger is good. 39 H. 6. 16.

25. Neither can the Arbitrators reserve to themselves a Power after the Time allowed them is expired, to do a judicial Act; for when the Time allowed them to make their Award is expired, they are as much Strangers as any other Persons.

4thly, *How far an Award which appoints the Doing of a Thing to a Stranger, be good, or not.*

1. Awards have been said to be void, as much when an Act was to be done to a Stranger, as by a Stranger; but as by the foregoing Cases it may be seen, that where the Stranger was compellable, or used only as an Instrument, or to do a ministerial Act only, the Award was good; so in the following Cases it will appear, that awarding a Thing

a Thing to a Stranger, if the Party to the Submission has any Benefit by it, the Award may be good.

2. If an Award be to pay a certain Sum of Money to a Stranger, who is out of the Award, it is void. *Moor and Beedle, 10 Co. 131.*

3. If a Condition be to stand to the Award, &c. and the Award is, that one shall assure Lands to the other and his Wife, where the Wife is a Stranger to the Submission; he is not bound to perform this Award as to the Wife. *1 Rol. Abr. 243.*

4. If *A.* and *B.* submit to the Award of *J. S.* who awards that the Servant of *A.* shall pay Money to the Servant of *B.* this is a void Award, for the Servants of both are Strangers to the Submission. *18 Eliz. between Dudley and Mallery, 3 Leon. 62.*

5. But if the Award be, that *A.* shall pay Money to the Servant of *B.* this is a good Award, for *A.* is a Party to the Submission. *Ibid.*

6. But *quere*, Whether in this latter Case it must not appear by the Award, that *B.* shall receive it, to the Use of his Master; and see *N. Dyer 242.*

7. If *J. S.* and *J. D.* are bound in 20 l. at my Request, and the Request of *W. N.* and after there is a Controversy between us Two, which of us shall pay this Money, among other such Bargains between us; upon which all Matters in Controversy are submitted to Arbitrament; and the Arbitrator awards that I shall pay one Moiety of the Money, with the Use, and *W. N.* the

The Compleat Arbitrator

other Moiety to the Obligee; this is a good Award, though he be a Stranger to whom it is to be paid, by those who submitted themselves; for here appears to be an Advantage to the Parties. 16 *Jac.* 1. between *Gray and Gray*, 1 *Roll. Abr.* 247.

8. If *A.* and *B.* for themselves, and the Wife of *B.* submit to an Award, the Arbitrators may Award that *A.* shall pay Money to *B.* and his Wife, because the Controversy did arise by Reason of the Wife. *March* 78. Adjudged, and affirmed upon a Writ of Error. An Award that Money should be paid to the Mother of one of the Parties, was held an Advantage. 1 *Salk.* 74.

9. In Debt upon an Obligation, conditioned to perform an Award, the Plaintiff sets forth the Award, *scilicet* that the Defendant should make an Estate for Life of certain Lands to the Plaintiff, Remainder to *J. S.* to which the Defendant demurred; and it was held, that the Award, as to the particular Estate, was good, though void as to the Remainder, which was to be made to *J. S.* he being a Stranger. *Hill* 42 *Eliz.* between *Bretton and Prat*, *Cro. Eliz.* 738.

10. If among other Things it be awarded, that one of the Parties, before the Mayor of *T.* and three others, shall make an Acknowledgment that he hath done such Injuries to the other Party; this is a void Award, because the Mayor and the three others are Strangers to the Submission; and there is no Means to compel the Mayor and the three others to meet. *Mich.* 12 *Car.* 2. between *Spignurel and Jene*, 1 *Sid.* 121 according

according to the better Opinion of the Book, though Judgment is said to have been given for another Reason.

11. But if the Award be, that one of the Parties shall make his Acknowledgment, &c. before the Mayor of T. only; this is a good Award; *per Bridgman and Tyrrel, cont' Hyde.*

12. In Debt upon a Bond conditioned, that A. and B. should perform an Award, the Defendant pleaded no Award made; the Plaintiff set forth an Award, which was, that A. should pay B. 50 l. and that A. should beg B.'s Pardon in such Manner, and in such Place, as B. should appoint; and that then each Party should Seal mutual Releases: And the Court held this naught; for the Arbitrator was to determine, and not to make B. his own Judge in his own Cause; and though the Time and Place be but Circumstances; yet in this Sort of Satisfaction they make the most considerable Part. 10 Will. 3. between Glover and Barrie, 1 Salk. 71.

But note, That there was no Objection made as to the Mayor's being a Stranger in this last Case.

13. *gthly, How Awards must be made according to the Submission, where there are several Arbitrators.*

1. If two Men submit themselves for all Matters, &c. to the Award of certain Arbitrators, to be made before a certain Day; and if they do not make any Award before the Day, that then they submit to the Ordinance

The Compleat Arbitrator.

nance and Judgment of 7. S. If the Arbitrators made an Award of Part of the Things submitted, and of Part not, the Umpire cannot make any Award of this Part, of which the Arbitrators have made no Award; because he hath no Power given, but upon the Arbitrators making no Award. 39 H. 6. re.

2. But if the Submission be, that if the Arbitrators make no Award of the Premises, or of any Parcel thereof, then the Umpire shall have Power to make an intire Award, or of the Parcel which remains, as the Case is; in this Case the Arbitrators may make an Award of Parcel; and the Umpire of the Residue, because this is expressly ordained, 39 H. 6. 11. b.

3. If the Condition of an Obligation be, to stand to the Award of *A. B. C.* and *D.* *ita quod* the said Award before such a Day be made in Writing by the said *A. B. C.* and *D.* or any Two of them, under their Hands, &c. any Two of the Arbitrators, without the rest, may make an Award; for though by the first Part they are bound to stand to the Award of those Four; yet their Power is divided by the subsequent Words, and the *Ita quod*, &c. is but an Explanation of the Condition, and the Whole makes but one Sentence. *Pasch. 9 Jac. 1.* between *Sallows* and *Girling*, *1elv. 203.* adjudged upon Demurrer.

4. In Debt upon an Obligation, the Condition was, to stand to the Arbitrament and Order of Four such Persons, naming their Names, &c. so as the same Award be made and delivered up in Writing, under the
Hands

Hands and Seals of the Four, or any Three of them; the Defendant pleaded no Award, and the Plaintiff shews, that Three of them made an Arbitrament under their Hands and Seals, and shews what, and assigns for Breach, the not paying a certain Sum of Money, which they arbitrated to be paid: Whereupon the Defendant demurred, pretending this Arbitrament to be void, because it was not made by all the four Arbitrators; for the arbitorative Authority is given to them all Four, and not unto Three of them, and the Words, *So as the same be made and delivered under the Hands and Seals of them, or any Three of them*, doth not alter the Authority, but that they ought all to make it; nor is it good if it be under the Seals of Three of them; and to that Opinion the Court at first inclined; but after several Arguments it was held, that the Arbitrament was good; for every Part of the Condition being weighed, the Intent appears, that it should be sufficient if Three of them made it: And although the Words at the First are to them Four jointly; yet that is sufficiently disjoined afterwards by the Words, *So as the same be made and delivered by any Three of them*; and an Authority may be well divided, though an Interest cannot; and this Judgment was affirmed in the Exchequer-Chamber. *Pasch. 14 Jac. 1. between Berry and Penning, Cro. Jac. 399, 400.*

The Compleat Arbitrator

SECT. IV.

Awards must be made according to the Submission, with Respect to the Making, Signing and Sealing, Delibering, and other Circumstances.

AS there are Variety of Cases which fall under this Section, and as these Parts of the Award, though they seem but Circumstances, have occasioned as many Doubts and Debates as any relating to the whole Learning of Awards; it will therefore be necessary, as in the foregoing Section, to consider them separately in the following Order:

- I. As to the Time and Manner of Making awarding Releases, &c. how the Award must agree with the Submission.
- II. As to the Signing and Sealing.
- III. As to the Date and Deliber.
- IV. Concerning the Appointing of a Place, Demand, Tender and Refusal, and other Circumstances.

As

1st, *As to the Time and Manner of Making awarding Releases, &c. How the Award must agree with the Submission.*

1. **A**S to the Time of Making the Award, it is absolutely necessary, that it be made within the Time allowed the Arbitrators by the Submission; for if they make an Award before their Power commences, or after it is expired, or after either of the Parties have revoked, it is absolutely void.

2. It may be made on any Part of the Day on which the Bonds of Submission bear Date; also it may be made the * Night before the Time is expired; and though it has been doubted, whether it could be made in the Night-time, yet it has been resolved, that being a judicial Act, it may; but it must not be made so as to prevent all the Parties to the Submission from being present; for if it be made in the Night-time, and no Notice proved to have been given to the Parties, it will be an Argument of Partiality in the Arbitrators.

* Cro. Eliz.
676.

3. If Two submit all Debts, Trespasses, and other Things, *ita quod* the Award be made before such a Day; if the Arbitrators make an Award of Debts at one Day, and of Trespasses at another Day, and of other Things at another Day, though they are all before the Day appointed, yet this is not a good Award as to the Two last Awards, because they have Power to make but one Award. 39 H. 6. 12.

4. But

The Compleat Arbitrator

4. But the Arbitrators may at one Day consider one Point, and at another Day another, and at a third Day the third Point, and then give one Judgment upon all the Points; so that the Judgment ought to be one, and not several. 39 H. 6. 12.

5. If Two submit themselves to the Award of *J. S. ita quod fiat* before *Michaelmas*, and the Arbitrators award that one shall pay 5 l. to the other for ten Loads of Wood, and awards several other Matters for other Things; and after this, if he that is to pay it can disprove, or better prove the Payment of any of the said Sums before them, or any of them, before the said Feast of *Michaelmas*, then so much as is proved shall not be paid at the said Feast; this is a good Award; for the first Part is good, and so thereby the Authority of the Arbitrators ended, and then a Reference to Proof or Disproof is meerly void. *Pasch. 16 Jac. 1.* between *Beckwith* and *Warley*, 1 *Rob. Abr.* 250.

6. If an Award be made touching certain Currans, that if the Defendant can, before the 20th Day of *December*, make it appear that the Currans were delivered to the Plaintiff, that then the Arbitrators should make a further Award within fourteen Days after, if they can agree, otherwise *J. S.* as Umpire, should conclude it within seven Days, and that the Plaintiff and Defendant should stand to the Award of the Arbitrators, if they make any, or of the Umpire, &c. and if the Defendant, before the said 20th of *December*, do not shew any such

Testi.

Testimony, then the Arbitrators award that the Plaintiff shall not pay for the Currans, but shall be free from any other Claim; *ac etiam Arbitratores arbitrati fuerunt quod Defendant shall pay 19 l. 12 s. before the first Day of January after, si Nullum alterius Arbitrium fieret for the Currans before the said Time; this Award is void, though it be averred that no other Award was made before the said 1st of January, for the Award, that if it be made appear, &c. they will make an Award, or make an Umpire, is void; for they cannot make an Award by Parcels, nor make an Umpire; and then the last Clause, that the Defendant shall pay 19 l. 12 s. if no other Award is made before the first of January, hath Dependence on the first Part of the Award, which was void; and it was not intended that the Defendant should pay the Money, if the Arbitrators or Umpire made any Award before; and if they had made any Award, this had been void.*

Mich. 9 Car. 2. between Brown and Dalton, 1 Rol. Abr. 250, 251.

7. If the Condition be to stand to the Award of J. S. of all Matters depending till 29 Jan. *Et. ita quod, &c.* and the Award recites, That whereas there were depending the said 29th of Jan. divers Matters, &c. and he awards *de B. super Premissis* of all Matters till the 28th of Jan. yet this is a good Award; because it does not appear that any Matter was depending the said 29th Day of January, which was not depending before the said 28th Day of January; and therefore, without Special Matter shewn, it shall be intend-

ed

ed a good Award, with the said Averment *de E3 super Premissis. Trin. 7 Car. 1. between Ward and Urwin, Cro. Jac. 216.*

8. If two submit all Controversies the 4th of May, to the Award of *J. S. ita quod Arbitrium fiat de Premissis*, and *J. S.* makes an Award *de Premissis* of all Controversies till the 1st of May, though here he hath not made any Award for Part of the Time submitted, but the Award is shorter; yet because it is made *de Premissis*, it shall not be intended that there was any mean Controversies between them, between the first of May and the 4th of May, unless this be shewn of the other Part; and therefore the Award is good enough. *1 Rol. Abr. 257.*

9. If two submit themselves to the Award of *J. S.* for the Title of certain Copyhold Land, and *J. S.* awards, That one, *scilicet A.* shall pay to the other, *scilicet B.* 6 l. upon the 21st Day of May, and 6 l. at Michaelmas next ensuing, and that *B.* shall release to *A.* all his Right in the Copyhold *super Pred die Maii*, omitting *vicefimo*, and awards over, that he shall make further Assurance within three Days after, &c. this is a void Award, for the Award for making of the Release *super Pred primo die Maii* is void, there being no such Day before mentioned; and it appears, that the Release at the said Day, should be the principal Consideration on his Part who ought to make it; and then the rest of the Award for further Assurance, which is good, is not sufficient, this being but Part of the Consideration, and a ward of his Part. *1 Rol. Abr. 254.*

10. It is expedient to mention in the Award, the Time and Place in which it was made, though it be not so provided by the Submission; but if the Submission requires it, it is absolutely necessary.

11. But the Plaintiff need not set forth in his Declaration, the Time and Place in which the Submission or Award was made; but if the Defendant denies either, the Plaintiff may reply, that the Award or Submission was made at such a Place, &c. *2 Brownl. 137.*

12. But if an Award is pleaded in Bar of a Trespass, a Place must be laid where the Submission was made. *Gro. Eliz. 66.*

13. As it is necessary that an Award should make a final End of all the Matters in Controversy, and as the Arbitrators always thought that it could not be better effected than by awarding mutual Releases to be given, they have seldom omitted, after other Things awarded, to order, that each Party should give as general Releases as could be framed; and those general Releases, where there were Demands on both Sides, being held advantageous to each Party, were thought (as in Truth they are) the most expedient Means for putting an End to the Controversy, being both Final and Beneficial to the Parties.

14. But notwithstanding the Expediency of awarding Releases, they sometimes have been the Occasion of that Strife which they were designed to prevent, which was chiefly occasioned by the Arbitrators awarding Releases to the Time of the Award, or to the

The Compleat Arbitrator

Time of making the Releases, which usually took in more Time than was submitted.

15. But now this Matter seems to be as well settled as any Thing relating to Awards, though it has occasioned as many Debates, as well as contradictory Resolutions.

16. At first indeed it was held, that awarding Releases to the Time of the Award was void, as comprehending more Time than was submitted, and therefore not made according to the Submission.

17. Afterwards it was held, That the Plaintiff should alledge that no new Matter did arise betwixt the Submission and the Award, which if he had done, it would be good, unless the Defendant took Issue upon it, and it was found for him.

18. But soon afterwards it was resolved, That the Plaintiff need not alledge that any new Matters did arise, but that, if in Truth there were any, it was incumbent on the Defendant to shew it.

19. And it has been frequently resolved, That where the Arbitrators award general Releases, without mentioning any Time, it shall be to the Time of the Submission only.

20. And now it is clearly held, that though the Arbitrators award general Releases to be given to the Time of the Award, yet the Award shall be good, and that upon a double Account.

21. 1st, Because no new Cause of Action shall be intended to have arisen between the Time of the Submission and Award, if it be not shewn by the Defendant.

22. 2dly,

22. 2dly, Because that a Release to the Time of the Submission is a good Release, in Pursuance of the Award, and this latter seems to be the best Reason; for a Man might have a Cause of Action accrue to him between the Submission and Award, and not know of it; and it were hard to put him under a Necessity of releasing it; and the Reason why a Release to the Time of the Submission is held good, is not because it shall be intended to be the Meaning of the Arbitrators that it should be so, but it is rather a Controlling of their Meaning, as far as it is void by Construction of Law.

But though the Law seems to be thus settled as to this Matter, yet as it is designed in this Treatise, to mention all the Cases reported concerning Awards and Arbitraments, I shall insert the Cases themselves which warrant the above Observations, that the Reader may be the better able to judge of them.

23. If the Condition of an Obligation be to perform an Award of all Actions between them, and the Arbitrators make an Award, That one shall make a Release to the other of all Actions till the Day of the Award made, which was after the Submission; this is a void Award, because it comprehends more Time than was submitted; for by the Submission such Actions only which were then between them were submitted, and this is intire, and therefore the Obligor is not bound to perform it. Between *Vanlore* and *Tribble*, 14 *fac.* 1. 1 *Rob. Abr.* 242.

24. If an Award be made *de & super Premissis*, in Manner following, *scilicet* That

one shall pay 40 s. to the other, and that the other shall make a general Release of all Matters till the Award made; this is void as to the Release, because it comprehends more Time than was submitted; and it is likewise void for all, for it cannot be intended that the 40 s. shall be paid in Satisfaction of all Matters, for it may be paid in Part of Satisfaction; so that this, together with the general Release, is a good Discharge; for the Arbitrators intended that the Release, with the Money given, should be a Satisfaction for all Matters between them, and not the Money without the general Release. 15 *Jac. 1. Popb.* 134.

25. If two submit the 1st of *May*, all Matters between them, and the Award is, That one shall pay to the other 20 s. in Satisfaction of all Matters between them till the Time of the Award made, which was the 4th Day of *May*, though this comprehends more Time than was submitted, yet because it shall not be intended that there were any mean Matters between the Submission and Award, unless it be shewn of the other Part, the Award is good. *All.* 85, 86. But my Lord *Roll*, in his Abridgment of this Case, is not satisfied with the Reason here given, although he says the Court relied on it, for this crossed the Reason of the Judgment of the above Case; but the Reason of this Case is, for that although there were other Matters mean between the Submission and Award, and so the Award for those Matters void; yet here is no entire Act to be done, as in the above Case of a Release, but the
said

said 203. continues a good Satisfaction of the other Matters submitted; and all the Inconveniencie is, that peradventure the Money to be given was increased for the mean Matters, and so he was at some Prejudice. 1 Rol. Abr. 258.

26. In Debt upon an Obligation dated the 29th of *July*, conditioned for the Performance of an Award, &c. so as the said Award be made before the Feast of St. *Bartholomew*; and the Plaintiff shews, that the Arbitrators the 8th of *August*, awarded that he should have such a Horse, which was in Controversy, and that the Defendant should pay unto him 3 *l.* towards his Charges, and that they should Release the one to the other all Matters whatsoever, betwixt the said Time and St. *Michael*; and alledgeth Breach for Non-payment of the said 3 *l.* whereupon it was demurred; and it was moved that it was not a good Arbitrament, being made on the 8th of *August*; to release all Actions, extends to more than they had an Authority to arbitrate; and although it was said, being pleaded, that they made the Arbitrament *de & super Premissis*, it is intended that there was not any Cause of Action arising betwixt the 29th of *July* and 8th of *August*, unless it were shewn on the other Part; *sed non Allocatur*; for the Words being general, unless the Plaintiff helps it with an Averment, that there were no more Causes betwixt them, it is not good; and then the Release appointed being void, there is nothing arbitrated for the Defendant's Benefit. *Cro. Jac.* 352, 353.

27. If there be a Submission to the Award of *J. S.* of all Matters till the Submission, *ita quod fiat de Premissis*, and thereupon an Award is made at a Day after the Submission, that one shall make a general Release of all Matters till the Award, and that the other shall pay 10 *l.* though there be an Award of both Parts, *Preter* the Release, which is void, yet the Award is void in the Whole, because it was intended that the Release should be Part of the Consideration. 16 *Car. 1. 1 Rol. Abr. 259.*

28. If the Submission be by Obligation, dated the 17th of *November*, to be made before *February* after, and the Award is made the 27th of *January*, that the Defendant shall make a Release of all Actions, &c. till the Award; and in Debt upon an Obligation for Non-performance of this Award, the Breach is assigned in not making of a Release; and it is averred, that no other Matter was between them; yet this is no good Breach, because if he should make this Release, it would release the Bond of Submission. 1 *Rol. Abr. 260.*

29. But if a Condition be to stand to the Award of *J. S. ita quod fiat de Premissis*, &c. and the Award is, That *A.* shall pay to *B.* the other Party, 20 *l.* two Months after the Award, and upon Payment thereof, each of the Parties shall make general Releases to the Time of the Payment; this is a good Award, though it comprehends more Time than was submitted; for when the Money is paid, then there is an end of the Submission and all, and so no Prejudice, though it releases the
Obliga-

Obligation or Promise of Submission. But Roll adds a *Dubitatur* to it. 1 Rol. Abr. 260.

30. If *A.* and *B.* submit to the Award of *J. S.* who awards, that *A.* shall pay to *B.* a Sum of Money at two several Days, and that they shall presently give to one another mutual Releases; this is a void Award; for by the Release, the Bonds of Submission, and the Money, would be discharged. Between *Adams* and *Adams*, 2 Mod. 169.

31. But if an Award be made, that a certain Sum of Money shall be paid at two several Days, and that mutual Releases shall be given; this is a good Award; for by the very Method and Order of the Award, the Releases are not to be given till after the Money is paid. 2 Mod. 170.

32. If a Condition be to stand to the Award of *J. S.* of all Matters depending, *ita quod Arbitrium fiat de Premissis*, and the Award is made upon the Premisses, that one shall release unto the other all Matters till the Award, which is out of the Submission, tho' there are Matters between them which arose after the Submission and before the Award, yet the Award is good, if it be not averred to the Court, that there were Matters between them in the mean Time. 1 Rol. Abr.

244.
33. If an Award be made *de & super Premissis*, and the Condition is *ita quod fiat de Premissis*, and the Award is, that one shall make a general Release to the other, of all Matters till the Award, and that the Parties shall be Friends and loving; this is good, although the Award is void as to Matters

after the Submission; and therefore he is not bound to make any Release of them, but of those only which were before the Submission; and in as much as it is averred, that the Award was *de & super Premiſſis*; it shall be intended that there were not any other Matters. 1 Rol. Abr. 260.

34. In Debt upon an Obligation, dated December 1. conditioned to perform an Award, so that it be made, &c. before the last Day of *Hillary* Term next ensuing; the Defendant pleads no Award; the Plaintiff replies, and shews an Award made before the last Day of the said *Hillary* Term, viz. the 8th Day of *February*, *de & super Premiſſis*, that the Defendant, within a Week after the Date of the Award, should pay unto the Plaintiff 7 l. 10 s. in Satisfaction of all Demands whatsoever; and that upon Payment thereof each of the Parties should release to the other all Demands; and avers, that no new Controversy or Cause of Action did arise within the Week after the said Award: The Defendant rejoins *quod bene & verum est*, that the Arbitrator made an Award *prout*, but further said, That after the Submission and before the Award, viz. the 6th of *February*, a new Cause of Action arose to the Plaintiff against the Defendant; for that the Defendant on the same 6th of *February*, did break and enter the Close of the Plaintiff, called *Blew*; whereof the Arbitrators had Notice; and so they made no Award; whereon the Plaintiff demurred, and now it is objected that the Award was void. 1st, Because it is for the Payment of Money

in

in Satisfaction of all Demands generally, which extends to the Time of the Award made; so it is beyond or out of the Submission. And 2dly, That the Release being general, refers to the Time of the Release given, and consequently shall release the last Cause of Action, which was not within the Submission, and shall also release even the Bond of Submission: But upon Argument it was resolved by the whole Court, that the Award was good, and a Difference was taken, where the Award is for a Satisfaction till the Award, or for a Release till the Award; this is ill; but when the Award is general, without being limited to any Time, and the same is made *de & super Premissis* (as here) this shall be intended to the Time of the Submission, and a Release of all Demands till the Submission, shall be a good Performance of the Award; and so Judgment was given for the Plaintiff. *Mich. 36 Car. 2. between Robinet and Cobb, 3 Lev. 188.*

35. A Submission was of all Controversies pending, and the Arbitrators awarded, that all Suits now pending between the Parties should cease, and that the Defendant should pay 10 l. in full of all Demands, and release all Demands till the Time of the Award, and upon the Payment of the Ten Pounds, the Plaintiff should release to him, &c. Upon a Writ of Error of the Judgment given in C. B. the Court held, That an Award of a general Release of all Demands till the Time of the Award, is good; for nothing new shall be intended to arise in the mean Time; and if any new Demand or
Contro-

Controversy did happen in the mean Time, the Award as to that new Demand or Controversy is void, for that was not within the Submission; and therefore it is a good Performance of it to tender a Release of all Matters in Controversy to the Time of the Submission, which is all he is bound to release; also if a new Controversy happened, which is not to be intended, he that pretends to excuse the Non-performance, ought by his Pleading to set it forth, and shew it.

2 Ann. between *Simon and Gavil*, 1 Salk. 74.

36. If *A.* and *B.* submit to the Award of *J. S.* and he awards that *A.* shall pay to *B.* 10*l.* and that *B.* shall pay to *A.* the Expences at the making the Award, and that upon the Performance of the Whole, they shall make to another general Releases; this is a good Award, for the Releases ought to be made on the Performance of that which is well awarded, and not to stay till the Performance of that which is void. 2 Lev. 3.

37. An Award was made, that the Defendant should pay the Plaintiff 7*l.* 10*s.* and also all the Expences of a Suit, prosecuted by the Plaintiff against the Defendant; and that thereupon each Party should make general Releases to one another; and it was objected, that though the Award was good as to the 7*l.* 10*s.* yet the Releases not being to be made, till that Part concerning the Expences, which is void for uncertainty, be performed, the whole Award is void, and the Defendant is not obliged to perform it; but it was resolved, that upon Payment of the 7*l.* 10*s.* which was well awarded, each

Party

Party was obliged to release; and that there was no Occasion to wait the Performance of that Part of the Award, which was void: 6 W. 3. between *Bargrave* and *Atkins*, 3 Lev. 413.

2dly, *As to the Signing and Sealing.*

38. If the Bond of Submission (as is most common) requires that the Award be signed or sealed, it makes it to be as necessary, that the Award should agree with the Submission, in this Respect as much as in any other.

39. As if the Condition be, to stand to the Award of *J. S. ita quod* the Award be made, signed, and delivered by the Arbitrators as their Deed, before such a Day; and after the Arbitrators make an Award, and this is sealed and delivered as their Deed, but they did not sign it; the Obligor is not bound to perform it; for the Signing is a particular Thing, distinct from the Delivery. 1 *Roll. Abr.* 245.

In Debt on an Obligation, conditioned to stand to the Award of *A. B. C.* and *D.* so that the said Arbitrators, or any Three, or Two of them, make the said Award under their *Hands* and *Seals*, before such a Day; the Plaintiff shews, that the Arbitrament was under their *Hands*, but doth not say under their *Hands* and *Seals*; and for this Cause the Judgment was reversed in the *Exchequer-Chamber*. 8 *Jac.* 1. between *Salmons* and *Girling*, 2 *Cro.* 277, 278.

In

The Compleat Arbitrator.

In Debt on a Bond, conditioned to perform an Award, so as the said Award were made and put into Writing, under the Hand and Seal of the Arbitrator, &c. the Defendant pleads, that the Arbitrator made no Award; and the Plaintiff replies an Award, by which such and such Things were to be done, and sets it forth *in hæc verba*, under the Seal of the Arbitrator; the Defendant rejoins, that the Arbitrator made no Award under his Hand and Seal, according to the Condition of the Bond; the Plaintiff demurs, for that the Defendant ought to plead the Award under the Hand as well as the Seal of the Arbitrators; for when he produces it in Court, as he doth by a *Profertur in Curia*, he must plead it formally, as well as produce it. 2 Mod. 77.

40. And it is said, that if the Arbitrator cannot write, he ought to set his Mark to the Award, if the Bond of Submission requires that the Award should be signed. 1 Bulst. 110.

3dly, *As to the Date and Delivery.*

41. It is usual in all Submissions which are by Bond, to express, in the Condition of such Bond, not only the Time the Award is to be made, but likewise when it is to be delivered; and such Circumstances must be observed as much as any other.

42. But herein observe, that if the Submission be by Bond conditionally, so as the Award be made, and ready to be delivered

to the Parties, or to such of them as shall require the same, the Parties so bound are obliged to take Notice of the Award at their Peril.

43. But if the Words of the Submission are so, that the Award be delivered to each Party by such a Day, then it must be delivered to each Party accordingly.

As in an Action of Debt upon an Obligation, conditioned to perform an Award between *A. and B. C. ita quod Arbitrium predictum fiat & deliberetur utrique partium predictorum*, and the Award was delivered to *A. and B.* only; and upon a Demurrer it was held, that it should have been delivered to all the Parties concerned. *Hungate's Case, 5 Co. 103.*

44. And in this Case my Lord Coke says it was resolved, That if Two submit on the one Part, and Two on the other, and the Words are, *ut supra*, that a Delivery to one of the one Part, and to another of the other Part, is not good.

45. If there be a Submission to the Award of *J. S.* so as the said Award be made under his Hand and Seal, at or before the 5th Day of *Sept.* following, ready to be delivered at the Shop of *J. N.* in the *Exchange, London*; and in an Action of Debt upon an Award made thereupon, the Plaintiff declares, that the said *J. S.* under his Hand and Seal, the 4th Day of *September* following, *apud Castrum Eborum*, did make an Award *adtunc & ibidem parat* to be delivered at the Shop of the said *J. N.* in the *Exchange, London*; this is no good Declaration, for

for the Parties are not bound to take Comu-
sance of the Delivery elsewhere than at the
Place appointed. *Pasch. 16 Jac. 1. between*
Busfield and Busfield, Cro. Jac. 577.

46. In Debt upon a Bond, conditioned
for the Performance of an Award, *ita quod* it
be made and ready to be delivered to the Par-
ties at a certain Day and Place; the Defen-
dant pleads, *Nullum fecerunt Arbitrium*; and
the Plaintiff replies, and sets forth an Award
made and delivered to the Parties at another
Day and Place; and it was adjudged, that
it was good, being delivered to the Parties
themselves, though at another Day and
Place. 2 *Lev. 68.* But *Hale* held that it was
not good; for being but the Execution of an
Authority, it ought to be done at the same
Day and Place.

47. If in Debt upon a Bond, conditioned
for the Performance of an Award, so as it
be made, &c. and ready to be delivered to
the Parties; or to such of them who shall
desire the same; the Defendant pleads, *Nul-
lum fecerunt Arbitrium*; and the Plaintiff re-
plies, and sets forth the Award, and shews a
Breach, but doth not say that it was ready
to be delivered to the Defendant; yet this is
a good Replication; for when the Award is
made, it is ready to be delivered to the Par-
ties, or to such of them who desire it; so
that it must be desired, and if denied, the
Party may plead that Matter specially. *Mich.*
4 Jac. 2. between Rowsby and Manning, 3
Mod. 330, 331.

48. If upon an Award by Parol, it is a-
warded, that one of the Parties shall pay to
the

the other 10 l. within six Months after the Date of the said Award; this is a good Award; and *per 2 Inst.* 674. if a Bargain and Sale hath no Date, it may be inrolled within six Months after the Delivery; for the Date in this Case must be intended the Giving up of the said Award within six Months, after which the Money ought to be paid. *Mich. 1 Car. 1. between Cable and Rogers, 3 Bulst.* 311, 312.

49. If in Debt upon a Bond, conditioned for the Performance of an Award in Writing, or by Word of Mouth, the Defendant pleads no Award made; and the Plaintiff replies, that at the Time of the Bond and Award he had an Action against the Defendant for scandalous Words; and that the Arbitrator *ore tenus* did declare and publish his Award in Manner following, *viz.* That the Defendant should pay unto the Plaintiff twelve Guineas, and all such Money as he had expended *circa prosecutionem placit' pred', &c.* this is a good Award, and well set forth, although the Award doth not mention any Suit before; for he that sets forth a parol Award is not tied to the very Words; but it is sufficient to shew the Effect and Substance of what was awarded by Word of Mouth. *Mich. 2 W. & M. 2 Vent.* 242. But it is said, that if the Award had been made in Writing, in such Form of Expression, it would not have been good. *Ibid.*

50. In Debt on a Bond, conditioned to perform an Award, *ita quod* it be made and ready to be delivered by such a Day; the Defendant pleaded no Award, and the Plain-

The Compleat Arbitrator.

Plaintiff replied a parol Award, and avers, that it was ready to be delivered by such a Day; to which the Defendant demurred; and it was insisted by the Plaintiff, that a parol Award was deliverable; for a Man is said to deliver a Message as well as a Letter, and that there is an oral as well as a manual Tradition; and as a parol Award is capable of Delivery, so it is ready to be delivered from the Time it is agreed upon; and of that Opinion was the Court, and so gave Judgment for the Plaintiff. 3 *Ann.* between *Oates and Bromil*, 1 *Salk.* 75.

51. It was awarded, that Erections, &c. should be pulled down within the Space of fifty-eight Days from the Date of the Award, and the Award being pleaded without any Date, it was upon this Account demurred to; and it was held by the Court, that the Day of the Delivery of a Deed is the Day of the Date, though there is no Date set forth; for if a Deed bear Date one Day, and be delivered at another, it was really dated when delivered, though the Clause of *Gerem. Dat.* be otherwise; so it is in the Case of this Award, the Making is the Date, 3 *Ann.* *Armist and Breame*, 1 *Salk.* 76.

4thly, *Concerning the Appointing of a Place, Demand, Tender and Refusal, and other Circumstances.*

1. As the Bond of Submission generally requires, that the Award should be delivered to the Parties, or that they should, at their Peril, take care to get it from the Arbitrators; it

is also often inserted in the Submission, that it should be delivered at a certain Place upon such a Day; in which Case it is incumbent on the Parties to shew, that they have attended, not only Part, but the whole Day, viz. from Sun-rise to Sun-set, if they would excuse themselves upon this Account.

2. And if any Thing is awarded to be done in Pursuance of the Award, and a Place where it should be done is mentioned, it is proper that such Place should be well known and accessable, as a Tavern or Coffee-house, or other publick Place; and then it is incumbent upon either of the Parties, as in the above Case, to shew that they have done what was necessary on their Parts, by being in a Readiness to perform their Part the whole Day.

3. But the Time is often limited to an Hour or Two, and this seems to be most convenient for them; the Party need not shew that he has attended a longer Time.

4. There are some Cases in the Books concerning the Payment of Money in or at the House of a Stranger.

5. As where Money was awarded to be paid in the House of *J. S.* a Stranger, it was thought not to be good; because it was unreasonable to subject the Party to an Action of Trespass. *Style 211.*

6. And where the Payment was to be at the House of *J. S.* it was held, that the Award was void, if the Owner of the House had Lands adjoining to the House, by which he could not come to the House without being a Trespasser. *1 Rol. Abr. 247.*

L

7. But

The Compleat Arbitrator.

7. But it has been adjudged and affirmed on a Writ of Error in Parliament, that if an Award be, that one shall pay so much to the other at the House of *J. S.* this is good; for he may come to the House, without entering the House, and so he shall be no Trespasser. *1 Rol. Rep. 6.*

8. And a Diversity is taken in *Style 211.* where the Payment is to be *in*, and where *at* the House of *J. S.*

9. And a *Quere* is made, Whether if the Award be, that the Party shall pay the Money in the House, or at the House where the Owner has Lands adjoining, he should not in such Case come as near to the House as he could, or else get Leave to come thither. *Godb. 255.* And it is said that the other Party should procure Leave; and if the Stranger refuses, this shall excuse the Performance.

10. An Award was, that one should pay Money at the House of *J. S.* in *C.* being the Sign of the *Cock*, and it was held good, being intended a common Inn. *Cro. Car. 226.*

11. In Debt upon an Obligation, conditioned to perform an Award, the Defendant pleaded no Award; and the Plaintiff replied, and set forth an Award, that in or at the *Mansion* of *J. S.* in *College-street* in *Bury*, the Defendant should pay the Plaintiff so much; and the Defendant demurred, and Judgment was given for the Plaintiff; for altho *J. S.* be a Stranger, the Words being only to pay, *in or at the House*, he may go to the Door of the House, and there pay it, without being a Trespasser, if he

he cannot prevail upon *J. S.* to give him Leave to pay the Money in the House. Between *Holland* and *Helwis*, 36 *Car. 2.* 3 *Lev. 153.*

12. It is now held necessary, that there should be a personal Demand of the Thing awarded, when the Submission is by Rule of Court; and that the Party must make Affidavit of such Demand before he can have an Attachment. 1 *Salk.* 83.

13. A Tender and Refusal of a Thing awarded, hath the same Effect in Awards as in other Cases.

14. As if an Award be, that one shall pay 10*l.* to the other, in Satisfaction of all Trespases, &c. if he who ought to pay it, tenders it at the Day, and he refuses, and after brings an Action for the Trespases aforesaid; this Award shall be a good Bar of the Action, because that it was his own Fault that it was not paid; and he hath his Remedy for the Money. 1 *Rol. Abr.* 267.

15. Upon a Tender and Refusal of what is to be done by one Person, he is intitled to what was awarded on his Behalf.

16. As if Two submit themselves to the Award of *J. S.* of all Controversies, and *J. S.* awards, that one shall pay 10*l.* to the other at such a Day, and that the other, upon the Receipt of the ten Pounds, shall make a general Release to the other, without appointing any other Thing to be done by him, who shall have the Money, and not expressing that the 10*l.* shall be in Satisfaction of Matters in Controversy; and though it is objected, that if he, to whom

the 10*l.* is to be paid, refuses to receive it, then he is not bound to make any Release; and then nothing is to be done by him; and so the Award is but of one Part, and only at the Will of him, whether he will make a Release; yet it was adjudged a good Award, because when one is awarded to pay the 10*l.* to the other, he is by Implication awarded to accept it; as if one had been awarded to pay 10*l.* in Satisfaction of all Controversies to the other; if the other refuses to accept the 10*l.* yet this is a good Award, because he is implicitly awarded to accept it in Satisfaction; and this Judgment was affirmed in Parliament, by the Advice of all the Judges. *Mich. 22 Car. 1. 1 Rol. Abr. 254, 255.*

17. If a Sum of Money be awarded one of the Parties, and that they both shall give mutual Releases; if he who is to receive the Money refuses it; yet upon a Tender and Refusal, he is as much obliged to sign a Release, as if he actually received it. *1 Salk. 75.*

S E C T. IV.

An Award ought to be certain.

1. **A**N Award is in nature of a Judgment or Sentence, in which there ought to be Plainness, and nothing left for Collection or Inference, for it ought to contain the Judgment of the Arbitrator himself, and not of another, upon his Words. *Tel. 98.*

2. And

2. And therefore, if an Award be uncertain, it shall be void, for the Arbitrators are Judges of the Case; and the Award ought to be certain, so that thereby the Controversy be decided, and that for the Uncertainty it be not the Cause of a new Controversy. 5 Co. 78.

3. If Two submit all Matters in Controversy between them; and the Award is, that one shall pay the one Moiety to J. S. and the other the other Moiety *cujusdam Debiti*, due to J. S. by two Strangers, who were bound to the said J. S. at the Request of them Two; this is no good Award; because it does not appear within the Award, in what Sum they were bound, though it be averred in the Plea after; because it cannot be known what Sum they intended. Per Dod. and Houghton cont' Montague. But Houghton inclined, that he might have helped it by an Averment, that there was not any other Obligation besides this. 16 Jac. 1. between Gray and Gray, 1 Rol. Abr. 263.

4. If Two submit all Controversies concerning certain Land, and the Arbitrator awards that one shall enjoy the Land, and the other shall enter into an Obligation to him; this is a void Award, because it does not appear of what Sum the Obligation shall be; for it shall not be imagined that he intended an Obligation according to the Value of the Land; and he cannot assign over his Power to the Parties themselves, to assess the Sum. 3 Co. Samon's Case 77, 78.

5. If the Submission be, that the Defendant should give Security to the Plaintiff for

the Payment of 16 l. at Two several Days; and the Plaintiff for Breach says, that he did not give Security, nor pay the Money, the Award is void for Uncertainty, in not shewing what Security he should give, whether by Bond, or otherwise; and every Arbitrament ought to be certain, that the Party may know what he is to perform. Adjudged in the *Exchequer-Chamber*, 10 Jac. 1. between *Thinne* and *Rigby*, Cro. Jac. 314, 315.

6. If there be a Contract or Covenant to give Bond for the Payment of a certain Sum of Money, without shewing of what Sum the Obligation shall be, it is good, and shall be intended of double the Sum; but an Award in such a Case is not good, in regard the Arbitrators are to make an End of all Differences. 1 *Lew.* 88.

7. If, where an Obligation is for the Performance of a Thing of a certain Value, which appears in the Agreement, the Sum to be mentioned in the Obligation shall be proportionable to the Value; but in an Agreement, where any Thing of an incertain Value is to be performed, and it is agreed that a Bond shall be delivered (without expressing the Sum the Party shall be bound in the Obligation) for the Performance of the same; and if in an Action on the Case for Non-performance, the Defendant demurs, or a special Issue be joined, Judgment shall be for the Defendant, in regard it does not appear in what Sum the Party is to be bound; nor can it be made certain, because the Thing to be performed is incertain, and therefore the Agreement incomplete;

pleat; but it is otherwise, if a general Issue be joined. Between *Pleafe* and *Palfrey*, 1 Sid.

270.

8. If Two submit all Controversies concerning the Right, Title and Possession of 200 Acres of Land, called *Kelstome Linge*; and the Arbitrators award, that in the waste Lands of the Town of *Kelstom*, one shall have the Brakes there growing during his Life, paying to the other 2 s. per Annum, without giving any Name to the Land in the Award; this is a void Award, and it cannot be helped by an Averment, that the Lands where the Brakes grow, is the said Land called *Kelstom Linge* submitted, and not other, nor divers, for he cannot expound the Intent of the Arbitrators. 1 Rol. Abr. 263.

9. If an Award be made between *A.* and *B.* touching certain Quarters of Malt, before delivered by *A.* to *B.* that *B.* shall pay to *A.* so much for every Quarter, as one Quarter of Malt was then sold for; this is a void Award, because it is not mentioned in what Place the Sale should be; for perhaps in one Market or Place it was sold for more than in another Market or Place, and therefore the Award is void for the Uncertainty. 1 Rol. Abr. 263.

10. If the Condition of an Obligation be, to perform the Award of *J. S.* between *A.* and *B.* of all Controversies and Demands between them, &c. and an Award is made of the Premises, *scilicet*, that *A.* shall permit *B.* to enjoy certain Leases of certain Land then in his Possession, which were the

Lands of *W. S.* and then the Inheritance of *A.* he, *scilicet B.* paying the Rents, and performing the Covenants in the Leases, and that *B.* shall deliver true Copies of the Leases to *A.* made by the said *W. S.* and that *B.* shall pay the Arrears of Rent due to the said *A.* after the Purchase thereof made; this Award, as to the Payment of the Arrears, though it be averred, that there was 2 s. of the Arrears of Rent then due, is not good for the Uncertainty; because it does not appear by the Award, how much Rent was due after the Purchase; for *B.* the Lessee does not know when *A.* the Plaintiff purchased the Reversion of *W. S.* nor hath any Means to know it, unless *A.* or *W. S.* will shew it him, which he cannot compel them to do. *Style* 365, 366.

11. If an Award be, that one of the Parties shall pay to the other so much as is due in Conscience; this is a void Award. Between *Watson* and *Watson*, *Trin.* 23 *Car.* 1. *Style* 28.

12. If an Award be, that one shall pay Quit-Rents, and other small Things, it is void for Uncertainty. *March* 144.

13. If an Award be, that one shall pay the other for certain Task-work and Day-work; this is a void Award, because of the Uncertainty of the Sum he should pay; and this cannot be helped by any Averment. *Mich.* 22 *Car.* 2. between *Pope* and *Brett*, 2 *Saund.* 292.

14. But if an Award be, that one shall acquit the other of an Obligation of 200 l. *ant eo circiter*, in which they are bound for the

the Payment of 105 *l.* *aut eo circiter*, to B. this is a good Award. *March 18.*

15. In an *Assumpsit* the Plaintiff declared, that whereas there had been several Differences between the Plaintiff and Defendant, (but said not touching what) they submitted to the Award of J. S. who awarded *de & super Premissis*, that the Defendant should pay to the Plaintiff 30 *l.* in Satisfaction of all Sums due to him, out of the Estate of W. &c. and, after a Verdict for the Plaintiff, Judgment was staid, because it did not appear that the Defendant was Executor, Administrator, or Trustee for W. or that he had any Thing of his, or had submitted in Behalf of him; and so there was no Consideration to charge him for the Estate of W. 2 *Lev. 235.*

16. If an Award be, that one shall pay to the other 6 *l.* the 21st of *May*, and 6 *l.* at *Michaelmas* following; and that the other shall release all his Right in such Lands *super predictis primum diem Maii* (omitting *vicefinum*) this is a void Award, because there was not any first Day of *May* mentioned before. *Telv. 97.*

17. If there be a Submission of all Controversies touching a Voyage to Sea, and an Obligation, with Condition for Performance thereof; and an Award is made, that one shall pay his Part of the Charge of the Voyage, and shall allow his proportionable Part of the Loss that shall come to the Ship by the Voyage, upon Account; and it is awarded farther of the other Part, &c. tho' this Award be of it self uncertain; yet in as much

much as it may be reduced to a Certainty, it is good enough. *Mish. 10 Car. 1. between Beale and Beale, 1 Rol. Abr. 251.*

18. If there be a Submission to the Award of *J. S.* so that be made at or before the last Day of *April*, and *J. S.* upon the last Day of *April*, makes an Award, that the said Parties, within four Days after the said Award, should give to each other Release to the Time of the Submission; provided that if either of the said Parties should be discontented with the said Award, and within twenty Days after the said Award, should pay to the other 10 s. that then the said Award should be void; yet this is a good Award; for the Proviso to make it void, after the Execution of the Releases, is repugnant; and if by not making a Release, either of the said Parties hath forfeited his Bond, it cannot be help'd, or become not forfeited by dissolving the Award by Proviso.

19. But if the Proviso had been, to be performed within the said four Days, the Award would have been void, because no final End of the Controversy, in as much as it is not certain, by Reason of the Condition, whether it shall be an End, or not? *Popb. 16.*

20. If an Award is made, that one of the Parties should pay Money, and the other should make a Release; provided that if one of them should be discharged of any Arrears due unto Soldiers, by an Act of Indemnity, that then the Award should be void; and by the whole Court, the Proviso being void, the whole Award is void, because intire;

and

and the Whole being awarded to be void upon a subsequent Accident, what they have awarded *in Presenti* is not good, neither is it consonant to the Submission (which is *in Presenti*) to make the Award depend on a Thing *in Futuro*. 1 Sid. 59.

21. One Part of an Award was, that the Defendant should pay the Charges of such a Suit; and it was objected, that this Award was void for Uncertainty; but it was held to be good enough, and certain enough, when the Attorney had made his Bill of Charges. Cro. Car. 383.

22. In Debt upon an Obligation to perform an Award, which was, That the Defendant should pay unto the Plaintiff such Costs as the Prothonotary of the Court, in which the Action depended should tax; and it was objected, that this was uncertain, and that the Prothonotary, by his Office, ought not to tax Costs but upon a Nonsuit or Verdict, and that the Arbitrators could not oblige him to do any Thing in his private Capacity. But notwithstanding, the Award was held good; for it is in the Power of the Parties to make themselves liable to have Costs taxed; also the Prothonotary is a publick Officer, and Judgment was given for the Plaintiff. Between *Worrel* and *Atworth*, 1 Sid. 358.

23. And Note, That it has been the constant Practice ever since, to award that one of the Parties should pay such Costs of a Suit as a Master should tax, and it has been held certain and good enough.

24. In Debt upon an Obligation, conditioned to perform an Award, the Defendant pleaded

pleaded no Award; and the Plaintiff replied an Award, that he should pay the Defendant 20 s. upon Condition that each should acquit the other of all Things submitted, and that the Defendant should pay the Plaintiff the Charge of a Suit now depending between them; and the Plaintiff gave the Defendant a Bill of Charges, and for Breach assigns, That the Charges amounted to 40 s. of which he delivered a Bill to the Defendant, and he had not paid it; upon this the Defendant demurred, and two Exceptions were taken.

1. That the Award is not absolute, but conditional, *scilicet*, that the Plaintiff should pay the Defendant 20 s. upon Condition that each shall acquit the other. 2. That the Award does not ascertain what the Charges are, but refers them to a Bill to be given by the Plaintiff; *sed per Cur.* As to the first, on Condition they shall acquit, is an Award that they shall acquit; and as to the Second, the Charges are ascertained by the Bill delivered. Between *Linfield* and *Feme*, 33 Car. 2. 3 Lev. 18.

25. In an Action on the Case for Performance of an Award, the Award was, That the Defendant should pay unto the Plaintiff 12 Guineas, and all such Sums of Money as the Plaintiff had laid out or expended in or about the Prosecution of the Plea aforesaid, &c. and avers, that he had expended 11 l. 8s. and it was objected, that this Award is uncertain, for that 'tis for the Defendant to pay all such Sums of Money which the Plaintiff had expended in the Suit, and it doth not appear how much was spent, and no Person

Person is assigned to reduce it to any Certainty; but if it had been, to pay all the Costs of Suit, that might have been good; because there is a proper Officer to tax the Costs. But my Lord Chief Justice *Polexsen*, with the rest of the Court, held, that the Award was good, and that it had made an end of the Suit, so that the Court had no Authority to tax the Costs; therefore after the Award no Judgment could be given as to that Matter, because then there was no Suit depending; and so it would make no manner of Difference, if the Word *Costs* had been inserted instead of the Word *Expences*; but here the Plaintiff had ascertained the Expences by his own Averment, that he had expended so much, &c. which the Defendant might have traversed, if he would, 1 & 2 W. & M. between *Hanson* and *Leverledge*, *Carth.* 156.

But see afterwards, where Part of the Award was, that the Defendant should pay the Plaintiff 71 l. 10 s. & *omnes Rationabiles expensas*, which the Plaintiff *sustinuisset circa factam Predictam*; and it was admitted that this Part of the Award was void, being wholly uncertain. 3 Lev. 413, 414. 6 W. 3. between *Bargrave* and *Atkins*.

26. An Award was, that one Party should pay the other ten Pounds, and the Costs of a Suit now depending in an inferior Court, and then to give mutual Releases; and *per Cur.* to pay such Costs as the Master shall tax, is good, for *id Certum est quod certum reddi potest*; but this is uncertain, and carries it further than has hitherto been allowed. But it

was

was adjourned. 3 *Ann.* between *Winter* and *Garlick*, 1 *Salk.* 75.

27. If the Condition of an Obligation be, to stand to the Award of *J. S.* and he awards that one shall enjoy a certain House, paying to the other 20 *s.* yearly, if the Rent is not paid, the Condition is broke. *Cro. Eliz.* 211.

28. So if an Award be, that *A.* shall make a Lease to *B.* and that for this Lease *B.* shall pay to *A.* a certain Sum yearly, this is good. 4 *Bendl.* 15.

29. So where an Award was, that one should keep and enjoy certain Goods, paying so much Money to the other; and it was held, that the Word *Paying* amounted to, and was the same Thing as that he shall pay. 1 *Sid.* 54.

30. If *A.* and *B.* submit to the Award of *J. S.* and he awards that *A.* shall pay 20 *l.* to *B.* upon Condition that each of the Parties shall acquit the other of all Things submitted, &c. this is a good Award, and not Conditional, but an Award that they shall acquit one another. 3 *Lev.* 18.

31. If the Award be to pay Costs in such a Suit, brought against the Party for scandalous Words, it ought to appear by the Award, that the Words are Actionable. Between *Spignurel* and *Jene*, 1 *Sid.* 12. But see the next Case following, where this Case is cited; and the Court said they were not satisfied with the Opinion, and that *Siderfin* was then a young Reporter.

32. An Action for scandalous Words being submitted to Arbitrament, the Arbitrators awarded the Plaintiff so much, &c. and

it

it was objected, that the Plaintiff should have shewn that he had Cause of Action, by alledging that the Words were Actionable; but it was held, that the Plaintiff need not shew that there was Cause of Action; for that is left to the Arbitrators, and they have Power to award Charges thereupon, though in Point of Law there was no Cause of Action; for the Parties have made the Arbitrators their Judges. 2 Vent. 242.

33. In Debt upon a Bond conditioned for Performance of an Award, which was set forth, and a Breach assigned, and upon a Demurrer these Exceptions were taken.

34. 1st. That the Award recited, that the Parties were Jointenants of such Land, and ordered they should make Partition by mutual Conveyances, which was said to be uncertain, and not making an end of the Matter, by shewing what Moiety, or Part, the one should have, and what the other; to which it was answered and resolved, that it was well enough; for whereas they were Jointenants before, they would now become Tenants in common.

35. 2dly, It was objected, that could not be, for it was further awarded, the one should have *Unam dimidiam Partem five medietatem*, which shews they intended something more than a Tenancy in common, but left it uncertain; for *Dimidia pars* is a Moiety in Certainty, and *medietas* is a Moiety uncertain.

36. But it was held by the Court, That *Dimidia Pars*, or *Medietas*, shall be respectively taken for a Moiety, divided or undivided,

secundum

secundum subjectam materiam; as *medietas* of a Thing to be delivered, shall be understood a divided Moiety, because it cannot be delivered unless it be divided; so *dimidia pars*, if it be such a Thing as cannot be reduced to a divided Moiety, shall be understood a Moiety divided. 6 *Mod.* 231.

37. An Award was made concerning some Scaffolds, &c. which the Defendant had erected on his Wharf, and which were alledged to be a Nuisance to the Plaintiff; and the Arbitrators awarded that the Scaffolds, &c. should be removed, but did not say by whom; and it was objected, that the indefinite Award was void for Uncertainty who should remove them: And of this Opinion *Holt*, Chief Justice, seemed to be; but *Powel*, *Powys*, and *Gould*, clearly contrary; for when the Arbitrators declare it to be a Nuisance, and that it should be removed, who should remove it but he on whose Ground it was; and though, in Point of Law, any Man may remove what is to his Nuisance; yet in Case of an Award, which is by Judges of Equity as well as Law, it must be intended that it was to be done by the Party on whose Ground it was. 3 *Ann.* between *Arnote* and *Breame*, 6 *Mod.* 244.

38. An Award was, That one of the Parties, he or his Executors, should release, &c. and my Lord *Holt* inclined to think, that it may be construed, that *he and his Executors* should release. 1 *Salk.* 69.

39. An Award to pay so much Money as such Land is worth, is void for Uncertainty. *Skin.* 248.

40. From

40. From the above Cases it appears, that whatever is awarded to be done, must regularly be certain in it self, or such as may be reduced to a Certainty by the Award; for the Law will not admit the Intent of the Arbitrators to be explained by any Averment, or by any Matter not contained in the Award it self. *Dyer* 242. 6 *Mod.* 244.

S E C T. V.

That the Award be final, so as to make an end of the Matters in Controversy.

1. **A**S the very Scope and End of Mens entering into Submissions to perform Awards, is, that it should be a final Determination of all Matters in Controversy between the Parties; Care is to be taken that all the Matters controverted be determined with that Certainty, so as to answer this Purpose; or if the Award be of a particular Thing only, that it be particularly determined, so as to make a final end of it.

2. But as the Cases in the foregoing Section shew what kind of Certainty is sufficient, or not, so as to make a final end of the Controversy; and as in the 8th Section of this Chapter, the Cases therein likewise shew how an Award may be good in Part and void for the rest; by which it will be understood, that a Determination of a particular Thing may make the Award final; I shall in this Section only insert such Cases

The Compleat Arbitrator.

as would not so properly come under either of the other two.

3. If the Condition be to stand to the final End and Determination of *J. S. Ita quod fiat de premissis*, and the Award is made concerning an Obligation, in which one is bound to the other, that the Obligee shall not prosecute, or cause to be prosecuted, any Suit against the Obligor, upon the said Obligation, this is a good Award; though it was objected that this Award is not final, for that this Award does not extinguish the Duty, but it is only awarded that he shall not sue upon; and if the Duty is not extinguished, it may be forfeited by Outlawry; but yet it was held to be a good Award; for it shall be taken according to the Intent of the Arbitrators, which was to extinguish the Duty.

14 Car. 1. between *Milwood* and *Stokes*,
1 Rol. Abr. 540.

4. But it is said, that if two have Actions one against the other, and the Award is, that each shall be nonsuit in his Action against the other, this is not good, because it is not final, for they may bring new Actions for the same Matter. 19 H. 6. 36. b.

5. So it is no good Award that one shall discontinue an Action which he hath against the other, and that the other shall so do of an Action which he hath against him, because it is not any final Determination of the Matters between them. 5 H. 7. 22.

6. But it is a good Award, that the Plaintiff in an Action shall make a *Retraxit*, for this is a good Bar. *Ibid.*

7. So

7. So is an Award that all Suits shall cease.
Style 110.

8. In Debt upon an Obligation for Performance of an Award, which was, that the Plaintiff should not prosecute nor proceed in the same Term, in such an Action; and it was held by the Court to be a good Award; and it was agreed that the Award being, that he should not prosecute in such an Action in the same Term, that the Entry of Continuance from Term to Term is not any Breach; and by two Justices, if one be obliged that he shall not continue such a Suit, if he continue it by Attorney, it is a Breach of the Obligation; but if the Attorney enter the Continuance without his Privy, it is no Breach. Between *Gray* and *Gray*, *Cro. Jac.* 525.

9. It was awarded that all Suits shall cease; and it was held by the Court to be a good Award, and final enough; and that the awarding that all Suits shall cease, amounted to a Release, for that an Award may be pleaded in Discharge as well as a Release.
2 Mod. 227, 228. *1 Lev.* 38. S. P.

10. And afterwards it was an Exception taken to an Award, that it was awarded *that all Suits now depending* should cease; and it was insisted upon by *Parker*, that it amounted to no more, than that the Party should be nonsuited, which is not final; he allowed that no new Suit could be brought whilst these depended, because these may be pleaded in Abatement; nor can these be prosecuted because of the Award; but if either of the Parties die, new Suits may be pro-

The Compleat Arbitrator.

secured for the said Causes, notwithstanding this Award.

11. But it was answered and so resolved, that the Awarding that all Suits shall cease, is, that they shall for ever cease; and it extinguishes the Duty; for if the Words had been, that all Actions should cease, the Duty had been gone; for if the Remedy be gone, the Right is gone; and the Word *Suit* is of a larger Extent and Sense than Action; for by a Release of Suits a Man may bar himself of an Execution, which he cannot do by Release of Action. 6 Mod. 34.

12. An Objection was taken to an Award, that it was awarded, that *a Suit in Chancery should be dismissed*, which, as was urged, was ill, for that an Award ought to be final, and that a Suit in Chancery might be dismissed upon Payment of Costs, so as the Party might begin again; indeed, if the Dismissing be absolute, it is final; but if it be dismissed, as is frequently done there, without Prejudice, the Party may begin again; and therefore an Award of Dismissing a Suit in Chancery is uncertain, and not final; but is like awarding that one of the Parties in a Suit at Law be nonsuited; which is void.

13. But the Court held, that though it were true, that the Awarding that one of the Parties should be nonsuit, were void, as not being final; yet to award that a Suit shall be dismissed, were different, and must be understood that it must cease for ever; that is a substantial Dismission and Cesser, and not the Shadow of one; as if the Condition of a Bond be, to deliver up another Bond

Bond to be cancelled; and the Obligee, before the Day, puts the first Bond in Suit, and obtains Judgment thereupon, and at the Day tenders it to be cancelled, according to the Letter of the Condition of the second Obligation; yet his Obligation is forfeited; and Dismissing here is put in Latin *Dimittere*, with an *Anglice* to discharge; and to discharge a Suit is to release it, *ideo final*. 1 Salk. 75. 6 Mod. 282.

14. The Arbitrators must make a final End of the Controversy, before the Time allowed them to make their Award in is expired, for they cannot regularly reserve any Power to themselves. *Vide Chap. V.*

15. As if *A.* and *B.* submit to the Award of *J. S.* so that he makes his Award before the 8th of *March*, and *J. S.* accordingly makes his Award, that *A.* shall pay to *B.* 50 l. viz. 10 l. at *Michaelmas*, 10 l. at *Christmas*, and 10 l. at *Lady-day*; and if before the said last Payment *videretur* to the said *J. S.* that *A.* was engaged for the said *B.* in any Debt not satisfied, that then the said *B.* should repay unto the said *A.* so much Money as the said Debt amounted unto; this Award is void, because not final; for Part is reserved to his future Judgment, which an Arbitrator cannot do. *Mich. 18 Jac. 1. Winch and Sanders, Cro. Jac. 584.*

16. But it is said, that if the Award had been, that if *A.* shews any Bill of Debt to such a Sum, that then this Sum certain shall be repaid, that it might have been a good Award. *Ibid.*

The Compleat Arbitrator.

17. And *note*, that there is a Diversity taken, where the Arbitrator reserves to himself a Power to do a judicial, and where a ministerial Act; and that the first is void, tho' the latter may be good. *Palm.* 146.

18. And where the Arbitrators reserve to themselves a Power within their Time, and over a Matter submitted, the Award is not final, and so void; but when the Power goes to a Matter not within the Submission, the Power is void, and the Award good. *Palm.* 110.

19. And if there be a Submission to the Award of *7. S.* so that it be made at or before the last Day of *April*, and *7. S.* upon the last Day of *April*, makes an Award that the said Parties, within four Days after the said Award, should give to each other Releases to the Time of the Submission; provided that if either of the said Parties should be discontented with the said Award, and within twenty Days after the said Award should pay to the other 10*s.* that then the said Award should be void; yet this is a good Award; for the Proviso to make it void after the Execution of the Releases, is repugnant; and if by not making a Release, either of the said Parties hath forfeited his Bond, it cannot be helped, or become not forfeited by dissolving the Award by Proviso. *Popb.* 15, 16.

20. But in this Case it is said, that if the Proviso had been to be performed within the said four Days, the Award would have been void, because no final End of the Controversy, in as much as it is not certain, by Reason

Reason of the Condition, whether it shall be an End, or not. *Ibid.*

S E C T. VI.

An Award must appoint the doing something Beneficial to each Party.

1. **I**T has been always held necessary, that Awards should be mutual, *i. e.* appoint the Doing of something beneficial to each Party, in Appearance at least.

2. But herein it must be observed, that the Cases in the old Books differ from our more Modern Resolutions and Stile, more from our Modern Practice; and that it must appear now, that it was not possible for the Party, who complains of Inequality, to have reaped the least Advantage by the Award, and that nothing at all was awarded to be done unto him; for the Arbitrators being Judges of the Parties own chusing, it will not be presumed but that they have done each of them Justice.

3. It must likewise be observed, that let the Award be ever so severe on one of the Parties, as by Awarding him to pay 1000 *l.* when there was but 100 *l.* due, if there be any Thing awarded to be done unto him, as the paying him a Penny, or giving him a Release; the Award will be held equal and advantagious in Law; and there can be no Remedy against it, but in Equity.

4. If a Trespass be put to Award, if the Arbitrators award nothing to be done by him who did the Trespass, it is worth nothing. 43 E. 3. 28. b.

5. So if they award that he shall wage his Law, that he is Not guilty, and that he shall be quit; and he does it accordingly, without Satisfaction, it is not good. 46 E. 3. 17. b.

6. So if a Trespass for Taking his Cattle be put to Award, if the Arbitrators award that the Owner shall have his Goods again; this is not good, because there is no Satisfaction awarded for the Damage of the Taking and Detinue. 45 E. 3. 16.

7. So it is no good Award, that one shall go to Rome or Paul's; for this is not any Advantage. 9 E. 4. 44.

8. It is no good Award, that one shall make a Release to the other of Land, in Satisfaction of an Action, if he to whom the Release is to be made, had nothing in Land at the Time, for then it is no Advantage to him. 9 E. 4. 44. b.

9. But if a Man makes to me a Release of certain Land, of which I am seised, and after he gets the Release again, and after he and I submit all Matters to the Award of J. S. who awards, that he shall deliver to me all the Evidences concerning the Land, in Satisfaction of a certain Action; this is a good Award, though these are my own Evidences; for this is an Advantage to me, to have them without Suit. 9 E. 4. 44.

10. In an Action of Debt upon a Bond, conditioned for the Performance of an Award, the Defendant pleaded, that the Arbitrators

bitrators did make an Award, that the Defendant should pay to the Plaintiff 3100*l*. and should give to the Plaintiff a general Release; and pleaded that he had paid the Money and given a Release accordingly, but did not shew what, on the Part of the Plaintiff, was awarded to be done; and the Plaintiff replied, without shewing the other Part of the Award in his Replication, and took Issue, that the Defendant had not paid the Money; and the Defendant put in an insufficient Rejoinder, upon which the Plaintiff demurred.

11. And it was held by the Court, that the Plaintiff could not have Judgment, it appearing by the Pleading to be but an Award of one Side only; but if the Plaintiff would have helped himself, he ought to have shewn the other Part of the Award before he had taken Issue; but the Court would not give Judgment for the Defendant, but suffered the Plaintiff to discontinue, because they apprehended it to be only a Trick in Pleading; for which the Chief Justice reprehended *Sanders*, who excused himself, by Reason of the Severity of the Award. *Mich. 21 Car. 2. between Veal and Warner, 1 Saund. 326.*

12. When a Thing appeared by the Submission and Award to be certain, and due to one of the Parties, it has been held, that awarding Part or Parcel of such Thing they ascertained, was not good.

13. As an Award to pay Parcel of a Debt due is not good. *45 E. 3. 16.*

14. So

The Compleat Arbitrator.

14. So an Award that the Owner shall have Parcel of his own Goods, is not good. 45 E. 3. 16.

15. So if *A.* and *B.* submit all Controversies between them concerning a Wine Licence, and the Arrears of certain Rent; and the Arbitrators reciting 15 *l.* to be due to *A.* make an Award that *B.* shall pay 7 *l.* 10 *s.* to *A.* in Satisfaction of Part of the said 15 *l.* and shall assign the Wine Licence to *A.* this is a void Award as to the Assignment of the Wine Licence. *All.* 52. But *Bacon* held, that it should be in Satisfaction of the other 7 *l.* 10 *s.*

16. But this Distinction has not been so strictly adhered to of later Days; for it has been resolved.

17. That though it appears by an Award, that 72 *l.* was in Controversy for Rent due, and fifty is awarded in Satisfaction thereof, and general Releases to be given; yet this is a good Award; for though it did not appear, that other Matters were in Controversy, yet perhaps the Arbitrators did consider other Matters; and 'tis but unreasonable for him to find fault in whose Case this Award is made. 2 *Mod.* 303, 304.

18. If the Arbitrators reciting, that whereas there were several Differences between the Plaintiff and the Defendant concerning a House, and divers Elms, and Arrears of Rent, they, to make a final End of all, award the Defendant to pay to the Plaintiff 4 *l.* for all the said Arrears of Rent; this is a good Award; for either it shall be intended,

intended, that the other Matters were otherwise determined; or when the Award says, to end all Differences, it shall be intended that the 4*l.* was given in Satisfaction of all. *Trin.* 16 *Car.* 2. between *Hopper* and *Hacket*, 1 *Lev.* 133.

19. If *A.* and *B.* submit to the Award of *J. S.* who makes his Award, that *A.* shall pay to *B.* 15*l.* which the said *J. S.* did adjudge the said *B.* to have sustained in Costs and Damages, by Reason of a Suit without Cause commenced by *A.* against *B.* and that all Suits and Differences between them shall cease; this is a good Award; for by this Award *A.* is not subject to have Costs taxed against him at the Prayer of *B.* and therefore the Award is not of one Side only; though it was objected, that *B.* had no Advantage by Staying his own Suit, and paying 15*l.* Costs; and that it did not appear, that there were any other Differences between them. 2 *Vent.* 221.

20. It is a good Award where each Party is indebted in 40*s.* the one to the other, that the one shall be quit against the other, for there is a sufficient Satisfaction, 19 *H.* 6. 37.

21. If an Award be, that all Controversies shall cease, and that one shall give 12*d.* to the other; this is a good Award, though the other hath nothing given to him; for it may be, that he hath done a greater Trespas than the other. 1 *Rob. Abr.* 254. 1 *Lev.* 58. the like Point adjudged.

22. If an Award be *de & super Premissis*, that each of the Parties shall make a Release the

the one to the other, of all Matters till the Award; and that one of the Parties shall pay 10*l.* to the other at a Day certain; *Et quod partes Predictæ continuarent amantes & amici ut in Priori tempore*; this is a good Award; for though it be admitted, that the Award, as to the general Release till the Award made, is void (though the Court inclined *contra* as to this Point) yet the Award for the Payment of 10*l.* is an Award of both Parts, because it shall be intended to be in Satisfaction of all Matters between them, especially in this Case, where it is said, that the Parties shall be Friends, *ut in Priori tempore*. 1 *Rol. Abr.* 254.

23. All the Matters awarded to be done on the one Side, were pardoned by the General Pardon; and the Award was, notwithstanding this, held good. 1 *Sid.* 178.

24. And *note*, that where there are several Parties, something beneficial must be awarded to each.

25. As if three Persons, *scilicet* A. B. and C. of the one Part, and D. of the other Part, submit themselves to the Award of J. S. *ita quod*, &c. and he makes an Award between A. and B. of the one Part, and D. of the other Part, and makes no Award between C. and D. this is not good. 1 *Rol. Abr.* 540.

26. But the Condition of the Submission may be such, as that it may not be requisite to make an Award between all the Parties.

27. As if A. and B. of the one Part, and C. of the other Part, submit themselves to the Award of J. S. of all Matters between them,

them, *J. S.* may make an Award of any Matter between *A.* only and *C.* though *B.* hath nothing to do therewith; for the Submission shall be taken distributively: 8 Co. 98.

28. And *note*, that where one Person submits for another, regularly there must be something advantageous awarded to be done to him on whose Behalf the Submission was. *Cartb.* 413.

29. If *A.* and *B.* submit to the Award of *J. S.* who makes an Award, that *A.* shall be bound with such Sureties as *B.* shall approve, for the Payment of 100*l.* to *B.* and that thereupon they shall seal mutual Releases to one another; this is a void Award, because *B.* must first approve of the Security before, and without which the Releases are not to be given; so that it is but an Award but of one Side. *Hill.* 1 *W. & M.* between *Tbirshy* and *Helbot*, 3 *Mod.* 272.

30. A Thing may be beneficial to the Party, altho' it be awarded to be done to a Stranger.

31. As if an Award be, that *A.* shall pay Money to the Servant of *B.* this is good. 3 *Leon.* 62.

32. But then it must appear, that the Servant received it to the Use of his Master. *N. Dier* 242.

33. So if *J. S.* and *J. D.* are bound in 20*l.* at my Request, and the Request of *W. N.* and afterwards there is a Controversy between us Two, which of us shall pay this Money, among other such Bargains between us; upon which all Matters in Controversy are submitted to Arbitrament; and the Arbitrator

bitrator awards, that I shall pay one Moiety of the Money with the Use, and *W. N.* the other Moiety to the Obligee; this is a good Award, though he be a Stranger to whom it is to be paid by those who submitted themselves, for here appears to be an Advantage to the Parties. 1 *Rol. Abr.* 247.

34. In Debt upon a Bond, the Defendant prayed *Oyer* of the Condition, which was for performing the Award of *J. S.* and pleaded *Nul agard fait*; and the Plaintiff replied, and set forth an Award, which was, that the Plaintiff and Defendant should pay each a certain Sum yearly to *A.* for the Use of *Mrs. Bird*, their Mother. *Broderick* took an Exception to the Award, that this was to award a Thing to be done to a third Person, who is a Stranger to the Submission, and consequently of a Matter out of the Power of the Arbitrators; but *Holt Ch. Just.* was of Opinion, that a general Award of Money to a Stranger was good; for it shall be intended the Submittants were bound as Trustees, or were liable to pay the same; and the Payment shall be intended for their Benefit, unless the contrary appear; but *Powel* was of a contrary Opinion, and he said it must appear to be for their Benefit; and it shall not be so intended, unless it does appear; but in the principal Case he held, that it should be intended to be for their Benefit, or rather that it appeared to be so, because the Payment was to the Use of the Mother; but no Judgment was given.

1 *Salk.* 74.

S E C T. VII.

An Award must appoint the Doing of a Thing that is reasonable; possible, and lawful.

1. IT has been often observed, that the Arbitrators being Judges of the Parties own chusing, the Law will not countenance nor regard any Complaints, which may be made with Respect to the Unreasonableness or Severity of the Award, unless it appears to be so unreasonable or severe as to be against Law, or impossible to be performed; and therefore it is, that we have but few Cases, wherein it has been attempted to set aside the Award barely on this Account; however, it is said that,

2. If an Award be, that one shall serve the other two Years in Satisfaction of an Action, he is not bound to perform it. 9 E. 4. 44.

3. If there be a Submission of all Controversies between the Parson of A. and the Parishioners there, and the Arbitrators award, that the Parishioners at all Times shall give Notice to the Parson, when they shear their Sheep, so that the Parson or his Servants may be there, it is a good Award; for the Notice must be given at the Parsonage, where, by Intendment of Law the Parson is always resident; *per Croke*: But *Hutton* held, that the Award was void, because, as he said, it was unreasonable that the Parishioner

rishioner must find the Parson *ubicunque*, &c. to give him Notice; but it was adjudged afterwards, according to the Opinion of *Croke*, between *Mudy* and *Osam*, *Lit. Rep.* 30.

But though the Courts of Law are not willing to give any Countenance to Complaints founded barely on the Unreasonableness or Severity of the Award; yet it is otherwise where the Award is impossible to be performed, or where it is against Law.

4. As if the Arbitrators award *J. S.* to pay a Sum of Money at a Day past, it is void, and the Condition is saved. 8 *E.* 4. 1. *b.*

5. So if it be awarded to turn the River of *Tbames*, to release all Right in the Manor of *A.* when in Truth there is no such Manor. 22 *H.* 6. 19.

6. So if the Award be, that one shall command the Justices *de Banco* to make him to levy a Fine before a certain Day; this is void; because it is not in his Power. 19 *E.* 4. 1.

7. If Two submit themselves to the Award of *J. S.* for the Title of certain Copyhold Land, and *J. S.* awards that one, *scilicet A.* shall pay to the other, *scilicet B.* 6 *l.* upon the 21st Day of *May*, and 6 *l.* at *Michaelmas* next ensuing; and that *B.* shall release to *A.* all his Right in the Copyhold, *super predict' primo die Maii*, omitting *vice-simo*, and awards over, that he shall make farther Assurance within three Days after, &c. this is a void Award; for the Award for Making of the Release *super pred' primo die Maii* is void, there being no such Day before-mentioned; and it appears that the Release

Release at the said Day should be the principal Consideration of his Part, who ought to make it; and then the Rest of the Award for further Assurance, which is good, is not sufficient, this being but Part of the Consideration, and Award of his Part. 1 *Roll. Abr.* 254.

8. But if the Thing to be performed be possible, though it appear extream difficult, yet the Party is bound to perform it.

9. And it is said, that if one be awarded to go to such a Place, and bring from thence a certain Thing which is not there; yet the Party is obliged to convey it first to the Place, and then bring it from thence. 9 *H.* 7. 15.

10. An Award that one shall pay 20*l.* where he hath not 20*d.* or twenty Tun of Wine, where he hath not one, is a good Award. 19 *E.* 4. 1.

11. It is said in the Year-Book, 18 *E.* 4. 21. that if an Award be, to make an Obligation to another immediately after the Award; this is void; for a Space is requisite.

12. But otherwise it is, if he awards that one shall make a Feoffment to the other of one Acre, and shall immediately after deliver the Charters; this is good; so if it be, that he shall make an Obligation, and immediately after pay the Money; for this is possible. 18 *E.* 4. 21.

13. But the Law seems to be well settled as to this Point; for it has been adjudged, that if an Award be to pay Money, without mentioning Time or Place, it must be intended immediately; and yet good. 2

Brown. 311. And *per Holt Ch. Just.* where no Time is appointed, it must be done in convenient Time, for the Law supplies it; so, if there must be a Request, the Law says it must be in convenient Time after Request; if there needs no Request, but there must be a Tender, that must be likewise in convenient Time. 1 *Salk. 69.*

14. If an Award be, that one of the Parties shall kill, steal, forge a Deed, or the like, it is void. *Co. Lit. 206.*

15. If it be awarded, that Money shall be paid to an Infant, and that he shall make a Release; it is void; for the Infant's Release is not good in Law. 1 *Jon. 165.*

S E C T. VIII.

Awards void in Part, and good for the Rest; and void in Part, void for the Whole.

1. **T**HE most prevailing Distinction to be met with in our Books, relating to the Awards being void in Part, or in the Whole, is where the Submission is conditional, or with an *Ita quod fiat de Premissis* (as it is called) and where it is absolute, and enumerating several particular Matters in Controversy.

2. As in *Baspole's Case, 8 Co. 98.* where it is held, that if the Submission be conditional, or with an *Ita quod*, the Award must be made of all such Matters as the Arbitrators

sors had Notice of; otherwise it will be void for the Whole.

3. But if the Submission be absolute, or without any such conditional Clause, then the Arbitrators may make an Award of any Part or Parcel of the Matters in Controversy; and it will be good for such Part. *Ibid.*

4. But it does not seem that it is upon the above Distinction, that Awards are now held to be good in Part, and void for the Rest; for it is a stated Rule concerning Awards that are said to be *de & super Premissis*.

5. That if the Words used in them be in their Nature more comprehensive, and so extensive to Things not within the Submission; yet they shall be intended, that there was no other Matter between the Parties for them to lay hold on, but what was submitted, if the contrary be not shewn; so *e converso*, if the Words are more narrow and less comprehensive, than to take in all the Matter of Submission; yet it shall be intended, that no more was in Controversy, than what the Words naturally comprehend, if the contrary be not likewise shewn.

6. And though this Rule has prevented in a great Measure Awards from being void on this Account, yet have they been often held good for Part, and void for Part, when they could not be said to come within this Rule.

7. And it appears, that Awards (tho' the Submission was conditional) have been held good, though the Arbitrators made an Award of Part of the Matters in Controversy, of which they had Notice, especially if they awarded general Releases. 1 *Saund.* 32.

The Compleat Arbitrator.

8. And that where an Award was made of the Whole, and Part happened to be good, and Part void; yet it has been held good for that Part which was well awarded, and void for the Rest; especially if that good Part did not depend on that which was void, as appears by the following Cases.

9. If upon a Submission by *A.* and *B.* of all Suits between them concerning certain Tithes, the Award be, that *A.* shall pay to *B.* such a Sum of Money, and that *B.* shall suffer all Suits to be discontinued which he hath against *A.* where he hath other Suits which do not concern the said Tithes; by which the Award is void for this; yet the Award is good for the Rest; for this is not so entire as a Release. Adjudged in *Cam. Scac.* 1 *Rol. Rep.* 362.

10. If the Submission be of all Matters depending, and the Award is, that he shall not prosecute any Action depending or arising, till the Award made, where there are mean Actions depending between the Submission and the Award, by which the Award is void for these; yet the Award is good for those which are submitted; because this is not so entire, but that this Part of the Award, which is good, may be performed. Between *Sayer* and *Sayer*, 1 *Rol. Abr.* 258.

11. If the Submission be of all Matters depending, &c. and the Award is, that one, *scilicet A.* shall pay to the other, *scilicet B.* 1000 *l.* at such Days, &c. and further afterwards, that all Actions, Controversies and Matters in Difference whatsoever, between the said Parties, presently shall cease, determine,

mine, and be void; and it is further awarded, that each Party shall make general Releases of all Matters and Demands between them till such a Day, which, by Admittance, comprehends the Obligation of Submission; yet, although this Award is void as to the Release, because, if it should be made, it would release the Obligation of Submission; yet the Award is good, in as much as there is an Award of both Sides, *preter* this, *scilicet* the Payment of the 1000*l.* and also that all Matters in Controversy between them shall cease, which is good; and so the Award of both Parts, and Recompence to them. 1 *Roll. Abr.* 258, 259.

12. In Debt on an Obligation to perform an Award, and in the first Part of the Award 'tis awarded, that all Suits and Controversies shall cease, &c. and though in all the Award afterwards nothing is well awarded, but only on one Part; yet it was agreed by the Court, that this is a good and mutual Award on the first Part only. Between *Harris* and *Knipe*, 1 *Lev.* 58.

13. In an *Assumpsit* for the Performing an Award, the Defendant pleaded, that the Submission was conditional, and that 4*l.* was due to him for Fees as an Attorney, of which he gave Notice to the Arbitrators; but that they notwithstanding awarded him to pay 6*l.* and that each Party should give mutual Releases; and though it was objected, that the Submission being conditional, or with an *Ita quod*, they should have made an Award of all that was notified to them; but in this Case it was held to be good enough,

nough; for they having awarded Releases, the Award was thereby mutual, and perhaps they did not deem this a just Debt. Between *Birks* and *Trippet*, 1 *Saund.* 32.

14. If *A.* and *B.* submit to the Award of *J. S.* and he awards that *A.* shall pay to *B.* 10*l.* and that *B.* shall pay to *A.* the Expenses at the Making the Award; and that, upon the Performance of the Whole, they shall make to one another general Releases; this is a good Award; for the Releases ought to be made upon the Performance of that which is well awarded, and not stay till the Performance of that which is void. 2 *Lev.* 3. Same Point adjudged 3 *Lev.* 413.

15. If in an Action of Debt upon an Award, the Plaintiff declares, that the Arbitrators did make an Award, that the Defendant should pay unto the Plaintiff 10*l.* this is a good Declaration, though nothing is shewn to have been awarded on the other Side; for it is sufficient for the Plaintiff to set forth that Part of the Award which intitles him to his Action. 1 *Leon.* 72.

16. If the Condition of an Obligation be to perform an Award, and the Award is, that the Obligor and a Stranger shall pay to the other Party 10*l.* though this is void as to the Stranger, yet it is good as to the Obligor, and he is bound to perform it. 1 *Roll. Abr.* 244.

17. If the Arbitrators award, that one shall make an Assurance of certain Land within the Submission, to the other and his Wife, where the Wife is a Stranger to the Submission; and therefore the Award is void

as

as to her; yet the Award is good for the Rest; for he ought to make the Assurance to the Party, the Husband. 1 Rol. Abr. 259.

18. So if an Award be, that one shall make a Lease for Life to the other, the Remainder to a Stranger in Fee; tho' as to the Remainder this is a void Award; yet it is good as to the particular Estate. Cro. Eliz. 758.

19. If Two submit themselves to the Award of *J. & ita quod fiat* before *Michaelmas*, and the Arbitrators award that one shall pay 5*l.* to the other for ten Loads of Wood, and awards several other Matters for other Things; and after this Award, if he that is to pay it, can disprove, or better prove the Payment of any of the said Sums before them, or of any of them, before the said Feast of *Michael*; then so much as is proved shall not be paid at the said Feast; this is a good Award; for the first Part is good, and so thereby the Authority of the Arbitrators ended, and then a Reference to Proof or Disproof is meerly void. Hob. 218.

S E C T. IX.

Concerning the Performance of the Award.

1. **T**HE Award being made by the Arbitrators, it is incumbent on each Party to perform whatever is awarded on his or their Part to be done; provided it be made in such Manner as the Law prescribes; for it seldom happens that any Thing else will excuse the Parties.

N 4

2. But

2. But if the Award be void, as being against Law, the Parties are not obliged to perform it, though the Submission be by Bond, or otherwise. *Dal.* 43.

3. Yet it is said, that if after such void Award made, there be an *Assumpsit* to perform it, this shall bind, for *Volenti non fit Injuria*. *Noy* 62.

4. If an Award be, that each of the Parties shall discontinue the Actions which they have one against the other, (admitting this is good, though it is not final) this is a good Award; for if the Court will not suffer a Discontinuance to be made, the Party shall be excused. 3 *Leon.* 62.

5. It is held, that where a Thing is awarded to be done, which afterwards becomes impossible by the Act of God, that the Party is excused; as if an Award be, to deliver a Horse, before such a Day, and he dies before the Day, the Party is excused. 21 *E.* 4. 70.

6. But if a Thing awarded to be done, becomes impossible by the Act of a Stranger, how far that will excuse the Non-performance, *quare*, and see 2 *Mod.* 27, 28.

7. In Debt upon an Obligation, conditioned for the Performance of an Award, by which the Parties were obliged to give mutual Releases, the Defendant pleaded, that he made a Release to the Plaintiff, and delivered it to *J. S.* for his Use; and this was held a good Performance, for that the Defendant could not plead *Non est factum*; neither could he countermand it; and as the Arbitrators had not appointed any Place where

where the Releases should be delivered; if the Plaintiff should absent himself, it would be very inconvenient. *Cro. Eliz.* 54.

8. If in Debt upon an Obligation, conditioned for the Performance of the Award of *J. S.* the Defendant pleads, That whereas there was a Suit in Chancery by the now Defendant, against the now Plaintiff, for such a Cause, &c. the said *J. S.* did award that the said Suit should cease, and that the now Plaintiff should stand acquitted *de qualibet materia in eadem contenta*, and avers that he did not any further prosecute the said Suit, but that the now Plaintiff always after *Stetit inde quietus*; this is a good Plea, without shewing any Discharge *in Facto*; and the Award being, that he *staret acquietatus*, it is no more, than that by that Award he should be acquitted. *Cro. Jac.* 339.

9. In Debt upon an Obligation for Performance of an Award, which was, That the Plaintiff should not prosecute, nor proceed in the same Term, in such an Action; and it was held by the Court to be a good Award; and it was likewise agreed, that the Award being, that he should not prosecute in such an Action in the same Term, that the Entry of Continuance from Term to Term is not any Breach; and by two Justices, if one be obliged that he shall not continue such a Suit; if he continue it by Attorney, it is a Breach of the Obligation; but if the Attorney enter the Continuance without his Privity, it is no Breach. *Cro. Jac.* 525. *Vide* the 9th Chapter, concerning pleading of Awards, what shall be a Breach, &c.

SECT.

S E C T. X.

Precedents of different kinds of Awards.

An Award in common Form, when the Submission is by Bond.

TO all People to whom this present writing of Award shall come, *A. B.* and *C. D.* of, &c. send Greeting. Whereas great Variance, Strife, Debate and Controversy hath heretofore been had, moved and stirred, between *E. F.* of, &c. and *G. H.* of, &c. of, for and concerning, &c. — For the appeasing and ending whereof, either of the said Parties, by their mutual Assents, Consents and Agreements, have submitted and bound themselves either to the other, by their several Writings Obligatory, bearing Date, &c. in the Sum of, &c. to stand to, obey, abide, observe, perform, fulfill and keep the Award, Order, Arbitrament, Judgment, final End and Determination of us the said *A. B.* and *C. D.* Arbitrators indifferently elected and chosen between the said Parties, to arbitrate, award, order, &c. — of and for the Premises, as by the said several Obligations, with the Conditions for the Performance thereof, relation thereunto had, more at large may appear. Now know ye, That we the said Arbitrators, having taken upon us the Business and Charge of the said Award,

Award, and willing to set the said Parties at Peace and Concord, by making a final End and Determination concerning the Premisses in Controversy; and having taken good Advice and Deliberation, and heard, and examined their Proofs and Allegations concerning the said Premisses in Controversy, do make, publish, declare and give up this our Award concerning the Premisses, in Manner and Form following, *viz.* First, We award, order, judge and determine, that, &c. also we award, &c. Finally, we award, judge and determine, &c. *In Witness* whereof we, the said Arbitrators, have put our Hands and Seals the Day of &c.

Another Form of an Award, upon a Submission by Bond.

TO all People, to whom this present Writing of Award shall come, *A. B.* of, &c. and *C. D.* of, &c. Arbitrators indifferently chosen, elected and named, by and between *E. F.* of, &c. and *G. H.* of, &c. to arbitrate, award, order, judge and determine, of, for, upon and concerning all and all manner of Action and Actions, Cause and Causes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, at any Time before our said Election, had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said Parties, as by the several Bonds or Writings

The Compleat Arbitrator.

things Obligatory of the said Parties, with the Conditions thereof, relation being thereunto had, more fully and at large may appear. Now know ye, That we the said Arbitrators, in pursuance of our said Election, and the Power given us thereby for the ending of all Matters to us therein submitted, and for the future Peace and Quiet of the said Parties concerning the Premisses, do arbitrate, award, order, judge and determine thereupon as followeth: First, &c. — *In Witness* whereof we, the said Arbitrators, have to these our present, &c. interchangeably set our Hands and Seals the Day of
Ann. Dom. 1730.

The Form of an Ampirage, briefly thus :

TO all People to whom this present Writing shall come, I *A. B. of C. &c.* Umpire, indifferently chosen by *E. F. of, &c. and G. H. of, &c.* having deliberately heard and understood the Grievs and Allegations, and Proofs of both the said Parties, and willing, as much as in me lieth, to set the said Parties at Unity and good Accord, do by these Presents arbitrate, award, order, deem, decree and judge, That the said *E. F.* his Executors or Administrators, shall well and truly pay, or cause to be paid unto the said *G. H.* his Executors, Administrators or Assigns, at or in the, &c. the full Sum of ten Pounds of lawful Money of *Great Britain*, on the first Day of *May* next ensuing
the

the Date hereof; and that upon Payment thereof, either of the said *E. F.* and *G. H.* shall seal, subscribe, and, as his several Act and Deed, deliver unto the other of them a general Release in Writing, of all Matters, Actions, Suits, Causes of Actions, Bonds, Bills, Covenants, Controversies and Demands whatsoever; which either of them may, might, or in any wise ought to have, of, and against the other of them, by Reason afore said, or Means of any Matter, Cause or Thing whatsoever, from the Beginning of the World until the 29th of *April*, (the Date of the Bonds of Submission.) *In Witness* whereof I have hereunto set my Hand and Seal the Day of in the Year of the Reign of, &c. *Ann. Dom.* 1730.

Another form of an Award or Arbitration, made by two Arbitrators.

TO all to whom these Presents shall come, or may concern, or to all to whom this present writing of Award indented shall come, We *J. C.* of *S.* in the County of, &c. and *J. W.* of, &c. send Greeting. *Whereas* *J. E.* of, &c. having a Lease of a Farm of Lands, called, &c. and situate in, &c. and now in his the said *J. E.*'s Possession, did agree to refer the Valuation, Appraisement and Estimation, as well of the Term of Years then therein to come, as also all the Iron Mine, Woods, Underwoods, Repairs,

The Compleat Arbitrator.

pairs, and all other Matters in Dispute between the said *J. E.* and *J. W.* of *W.* in the said County, Yeoman, of, for, touching and concerning the said *J. W.*'s taking and accepting of such Lease, Iron Mine, Repairs, Woods, Underwoods, Wood-Grounds and other Matters touching and concerning the same: In pursuance whereof the said *J. E.* and *J. W.* have bound themselves either to the other in the Penal Sum of 100*l.* by their several Obligations, bearing Date with Conditions there under-written, to stand to, obey, abide, observe, perform, fulfill and keep the Award, Order, Arbitration, final End and Determination of them the said *J. C.* and *J. W.* indifferently named, elected and chosen, by the mutual Consent, and at the earnest Request and Petition of both the said Parties; so that the said Award was made in Writing, ready to be delivered to the said Parties in Difference, or to such of them as should desire the same, on or before, &c. as in and by the said Obligations, and Conditions thereof, more plainly doth appear. *Now know ye,* That we the said *J. C.* and *J. W.* having taken upon us the Burthen and Charge of the said Award, and having deliberately and at large heard, examined, viewed and considered of the Value, Estimation and Contents of the said Farm, Goods, Chattels and Premisses, do by these Presents award, deem, adjudge and order, in Manner and Form following; that is to say, First, We do award, order and judge, That, &c. (and so having set down the Particulars of the Award, you may conclude

clude thus, *viz.*) and for the better Attestation and Confirmation of this Award, we the said Arbitrators have hereunto set our Hands and Seals this, &c.

The form of an Award by one Arbitrator, or Umpire.

TO all Christian People to whom this present Writing of Award shall come, *J. E.* of *B.* in the County of, &c. Esq; sendeth Greeting. *Whereas* divers Suits, Variances, Controversies and Debates heretofore have been moved, and depending between *E. T.* of, &c. of the one Part, and *R. H.* of, &c. of the other Part, for pacifying, ordering and ending whereof, the said *E. T.* and *R. H.* have bound themselves either to the other in the Sum of 100 *l.* by their several Obligations bearing Date the 23d Day of *November* last past, with Conditions there under-written, to stand to, obey, abide, perform, fulfill and keep the Award, Order, Arbitrament, final End and Determination of the said *J. E.* indifferently elected and chosen, by the mutual Consent, and at the earnest Request and Petition of both the said Parties, to arbitrate, award, judge, order and determine of, for, and concerning all and all manner of Action and Actions, Cause and Causes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, at any Time heretofore had, made, moved

moved or depending between the said Parties, by reason of any Act, Matter, Cause, or Thing whatsoever, from the Beginning of the World unto the Day of the Date of the said Obligations; so that the same Award was made in Writing, or otherwise ready to be delivered to the said Parties in Difference, or to such of them as should desire the same, on or before the, &c. as in and by the said Bonds, or Writings Obligatory, it doth and may more fully and at large appear. *Now know ye*, That the said *J. E.* of his good Will and Favour which he beareth to the said Parties, and out of the great Respect he hath to their future Quiet and Unity, taking upon him the Charge and Burthen of the said Award, and having deliberately and at large heard and examined, and considered the Grievances, Allegations, Witnesses, and Evidences of both the said Parties, doth by these Presents arbitrate, award, judge, deem, order and determine, That the said *E. T.* do and shall pay, or cause to be paid unto the said *R. H.* 100 *l.* of, &c. at or upon, &c. and that upon Payment thereof, either of them the said *E. T.* and *R. H.* shall seal and subscribe, and, as his several Act and Deed, deliver unto the other of them a general Release in Writing, of all Matters, Actions, Suits, Cause and Causes of Actions, Bonds, Bills, Covenants, Controversies and Demands whatsoever either of them hath, may, might, or in any wise ought to have against the other of them, by reason of the Matters aforesaid, or by Reason or Means of any Matter, Cause or Thing whatsoever,

from

from the Beginning of the World to, &c.
(the Date of the Bonds of Submission.) In Wit-
ness, &c.

**An Award between Executors at
Controversy about the Testator's
Goods, made by four Arbitra-
tors.**

TO all People to whom this present Wri-
ting of Award Indented shall come,
We *H. T.* of, &c. *W. N.* of, &c. *A. H.* of,
&c. *J. H.* of, &c. send Greeting. Whereas
lately heretofore a Suit, Variance or Con-
troversy was had and moved by or between
R. K. of, &c. of the one Part, and *G. K.*
of, &c. of the other Part, for and touch-
ing the Execution of the Last Will and
Testament of *C. P.* late of *L.* Widow, de-
ceased; who had thereby ordained, made
and appointed the said *R.* and *G.* Executors
of her said Last Will and Testament; for
the final ending whereof, and of all other
Controversies betwixt the said Parties, they
have submitted themselves to the Award,
Arbitrament and Judgment of us the said
Arbitrators, in such Sort or Manner as by
several Obligations of 50 *l.* a-piece in that
Behalf made by either of the said Parties
to the other of them, dated, &c. with their
several Conditions, plainly may appear; the
Charge and Business of which said Award
and Arbitrament, we the said Arbitrators
have taken upon us, and have thoroughly
heard and considered of all the Controver-
sies

lies between the said Parties, and of their Allegations, Declarations and Answers on both Sides; and now we do by these Presents make and give up our Award, Arbitrament, final End, Order and Judgment, of and upon the same Premisses, between the said Parties, in Manner and Form following, *viz.* First, We do award, order and judge, by these Presents, that the said G. K. and his Executors, shall permit and suffer the said R. K. to have and enjoy to his own Use, that Mourning Gown or Cloak, which he had after the Decease of the said C. P. against her Burial; *And also* that the said G. his Executors, Administrators or Assigns, shall on the 10th Day of, &c. between the Hours of, &c. pay, or cause to be paid to the said R. K. his certain Attorney, Executors or Administrators, at, &c. the Sum of, &c. and then and there also shall clearly and freely give and deliver to the said R. his Executors, Administrators or Assigns, six Silver Dishes, and a Silver Bowl Gilt, the whole weighing 29 Ounces, which late belonged to C. P. *And* we do further award, &c. That the said R. his Executors or Administrators, shall not at any Time hereafter either deal or intermeddle with the Execution of the Last Will or Testament of the said C. P. or claim, take or challenge any of the Goods or Chattels which were of the said C. other than only the Dishes and Bowl aforesaid; or receive, take, acquit and discharge any Debt or Duty which was owing or growing due to the said C. whilst she lived; *And also* that the said R. K. his Executors, Admi-

Administrators and Assigns, from Time to Time, and at all Times hereafter, shall agree and consent, permit and suffer, that the said G. his Executors and Administrators, shall and may peaceably and quietly have and take, and by all lawful Means recover and enjoy all and singular the Goods, Chattels and Debts which were of the said C. at the Time of her Decease, other than only the Dishes and Bowl aforesaid, without any Let, Claim, Hindrance or Impediment of the said R. his Executors or Administrators; And also that the said R. his Executors and Assigns, upon Payment and Delivery to him, or any of them, made of the Sum of Money, Dishes and Bowl aforesaid, in Form aforesaid, shall deliver, or cause, &c. to the said G. K. his Executors or Administrators, one sufficient Acquittance, testifying the Receipt of the same Money, Dishes and Bowl aforesaid. *And moreover* We the said H. &c. do hereby award, &c. that the said G. his Executors or Administrators, at the only Costs and Charges of the said G. his Executors or Administrators, shall well and sufficiently at all Times hereafter, upon reasonable Request to him or them to be made by him the said R. his Executors, Administrators or Assigns, save and keep harmless and indemnified the same R. his Executors and Administrators, of and from all and all manner of Actions, Suits, Costs, Damages, Judgments, Executions and Demands, which shall be had or brought against the said R. his Executors or Administrators, by Reason or Means that the said R. did take upon him

The Compleat Arbitrator.

to be Executor of the said Testament of the said C. And also that the said G. shall pay for the Drawing and Ingrossing of these Presents. *And lastly*, We do award that either of the said Parties, their Executors and Administrators, for their several Parts, shall from henceforth surcease from all farther Suit or Suits, Quarrels, Controversies and Differences whatsoever, both in Law and Equity, for any Matter between them two had, stirred or depending, at any Time before the Day of the Date of the said Obligations for standing to this Award, &c. *In Witness, &c.*

An Award in a Controberfy, arising by Means of a Copartner-ship.

TO all to whom this present Writing of Award shall come, T. S. of, &c. and S. B. of, &c. send Greeting. *Whereas* heretofore there have been divers Strifes and Variances moved, and are yet depending between R. H. of, &c. and J. C. of, &c. Executors of T. C. late of, &c. of the one Part, and H. B. of, &c. of the other Part; for the appeasing and final ending whereof, the said Parties have jointly and severally consented and entered into several Obligations, dated, &c. and which the said Parties have interchangeably sealed and delivered each to the other, and in the Conditions thereof have constituted, nominated and appointed us, the said T. S. and S. B. their Judges and Arbitrators,

bitrators, to award, arbitrate, ordain, order, judge and determine, of, for, touching and concerning all and all manner of Actions, as well Real as Personal, Suits, Quarrels, Controversies, Strifes, Variances, Accompts, Reckonings, Sums of Money, Costs, Debts, Dues, Damages and Demands whatsoever, had, moved, stirred or depending between the said Parties, in any manner of wise, from the Beginning of the World until the Date of the said Obligations, so as the same Arbitrament, Order or Judgment were had or made by us the said Arbitrators, and put in Writing under our Hands and Seals, ready to be delivered to the said Parties, or any of them, before the last Day of this Instant, &c. as by the said Obligations, with their several Conditions there under-written, more fully may appear: *And for as much* as we, the said Arbitrators, have taken the Charge and Burthen of the said Judgment and Arbitrament upon us, and thereupon have deliberately heard and examined all Variances and Controversies between the said Parties, and their Allegations, Answers and Proofs in that Behalf alledged, made and produced, do now thereof and thereupon make, ordain, and give up, in and by this present Writing Indented, under our Hands and Seals, our full and final Award, Arbitrament, Ordinance and Judgment, in Manner and Form following; that is to say, *That whereas* the said T. C. while he lived, and the said H. B. were Copartners, and jointly Trafficked together in divers Things, the Accompts whereof we have seen and examined; we do there-

The Compleat Arbitrator.

upon award, arbitrate, ordain and judge, by these Presents, that the said R. H. and J. C. or one of them, their Executors and Administrators, shall well and truly pay, or cause to be paid to the said H. B. his Executors, &c. the Sum of, &c. at, &c. that is to say, &c. And also we do by these Presents arbitrate, award, ordain and judge, that the said H. his Executors and Administrators, shall from Time to Time, upon the reasonable Request of the said R. or J. their Executors or Administrators, consent, suffer and agree, that at the equal and indifferent Costs and Charges of the said R. J. and H. and their several Executors and Administrators, all and all manner of lawful Suits, Actions, Recoveries, Judgments and Executions, shall and may in the Name and Names of the said H. his Executors and Administrators, be had and pursued with Effect against all and every Person and Persons, of and upon the Books of the said Accompts, and all and every Bond or Bonds, and Specialties whatsoever, which the said H. hath, of, or touching all or any of the Debts specified in the Schedule to these Presents annexed; and all and every the Profits, Commodities and Advantages whatsoever, to be had or gotten by Means of any the said Suits, Actions, Recoveries, Judgments and Executions, or by Means of any of them, shall be equally had, parted and divided, Part and Party-like, the one Half thereof to the said R. E. his Executors and Administrators, and that neither of the said Parties, nor their several Executors or Administrators, shall wittingly or willingly,

lingly, without the Consent of the other Parry, or of his or their Executors or Administrators, do, procure, or cause any Thing to be done, to hinder or defeat any the said lawful Suits, Actions, Recoveries, Judgments, or Executions, to be had as aforesaid, of or for any the said Debts, or to let or hinder the dividing of all Profits, Commodities or Advantages thereof or thereby to be had or gotten, contrary to the true Intent and Meaning aforesaid. *And further* we do award, order and judge, by these Presents, that the said *H. B.* upon reasonable Request, shall on the first Day of, &c. now next ensuing, make, seal and deliver, or cause to be delivered to the said *R. H.* and *J. C.* or to one of them, or otherwise for both their Uses, at, or in, &c. between the Hours of, &c. of the same Day, or otherwise in the mean Time before-hand, one lawful Acquittance general, of and for all Actions, Suits, Quarrels and Demands, from the Beginning of the World until the Day of the Date of the Obligations aforesaid. *And likewise* we do award, that the said *R.* and *J.* upon the like reasonable Request, shall on the said, &c. now also next ensuing, deliver, or cause to be delivered to the said *H. B.* at, or in, &c. between the Hours of, &c. or otherwise, &c. one lawful Acquittance general, of and for all Actions, &c. *ut supra.* *In Witness, &c.*

The Compleat Arbitrator.

To pay Money, and sign Releases.

TO all to whom this present Writing of Award shall come, *J. A.* of, *Es.* send Greeting. *Whereas* Differences have arisen, and are depending, between *B.* of, *Es.* of the one Part, and *C.* of, *Es.* of the other Part, for the Composing and final Ending whereof, they the said *B.* and *C.* by Two severall Obligations under their Hands and Seals, bearing Date the, *Es.* Day of, *Es.* now last past, became and stand bound to each other in the Penalty of, *Es.* a-piece, conditioned respectively to stand to, and perform the Award and Determination of me the said *A.* Arbitrator, indifferently elected and named between the said Parties, to award, order, judge and determine of and concerning all Manner of Actions, and Causes of Action, Suits, Bonds, Bills, Specialties, Judgments, Executions, Controversies, Damages and Demands between them, so as my Award should be made in Writing, and ready to be delivered to the said Parties in Difference, on or before the, *Es.* then next ensuing, as by the said recited Obligation and Conditions, Relation, *Es.* Now know ye, that I the said *A.* having taken upon me, the Burthen of the said Award, and fully heard and examined the said Parties in Difference, and their severall Proofs and Allegations, and duly considered thereof, do, within the Time to me in that Behalf limited, make and declare this my Award between them, as followeth, *viz.*

First,

First, I award and order, that the said C. his Heirs, Executors or Administrators, do and shall, on or before the, &c. at the Dwelling-house of R. B. situate in Lombard-street, London, well and truly pay, or cause to be paid unto the said B. his Executors, Administrators or Assigns, the Sum of, &c. which Money being paid, as aforesaid, I Award shall be in full Satisfaction and Discharge of all Actions and Suits, and Cause thereof, Bills, Bonds, Specialties, Debts, Dues, Sum and Sums of Money, Accounts, Reckonings, Judgments, Executions, Extents, Damages, Claims and Demands whatsoever, between the said Parties, to the said, &c. Day of, &c. now last past; and that the said B. shall accept thereof accordingly, being paid as aforesaid; And lastly I Award, that the said Sum of, &c. being paid, as aforesaid, they the said Parties, their Executors and Administrators, shall, on the said Day of, &c. now instant, and at the Place aforesaid, execute and deliver to each other respectively, a sufficient Release and Discharge of and from all Actions and Suits, and Causes thereof, Bills, Bonds, Specialties, Debts, Sums of Money, Accounts, Reckonings, Judgments, Extents, Executions, Damages, Claims and Demands whatsoever, in Law and Equity, between the said Parties, from the Beginning of the World to the said — Day of — now last past (the Date of the Bonds). In Witness, &c.

An

The Compleat Arbitrator.

An Award to pay Money, being the Ballance of an Account, and to pay back Part of the Money received with an Apprentice, and to deliver up his Indentures to be cancelled, and to sign Releases.

TO all, &c. *J. A.* of, &c. send Greeting.
Whereas Differences and Suits have arisen, and are depending between *B.* of, &c. of the one Part, and *C.* of, &c. of the other Part, for the Composing and final ending whereof, they the said *B.* and *C.* by two several Obligations under their Hands and Seals, bearing Date, &c. became and stand bound to each other, in the Sum or Penalty of, &c. a-piece, conditioned respectively to stand to and perform the Award, Order, Arbitrament and Determination of *D.* and *E.* Arbitrators indifferently named and chosen, as well on the Part of the said *B.* as of the said *C.* and *C. G.* her Son, to arbitrate, award, judge and determine of and concerning all and all Manner of Actions and Causes of Action, Suits, &c. (*as usual*) so as their said Award should be made in Writing, ready to be delivered to the said Parties, on or before the, &c. but if the said Arbitrators should not make such their Award of and concerning the Premises, by the Time aforesaid, then to stand to and perform the Award, Umpirage and Determination of me the said *A.* so as my said Award or Umpirage should be made in Writing, ready to be

be delivered to the said Parties in Difference, on or before the — Day of the said Month of — And the said Parties did thereby agree, that their said Submission should be made a Rule of his Majesty's Court of King's Bench at *Westminster*, pursuant to a late Act of Parliament, entitled, *An Act for determining Differences by Arbitration*, as by the said recited Obligation and Condition, Relation, &c. Now know ye, that I the said A. having taken upon me the Burthen of the said Award, and fully, &c. (*as usual*): First, I award and order, that the said B. his Executors, Administrators or Assigns, do and shall, on or before the, &c. at the Dwelling-house of R. B. &c. well and truly pay, or cause to be paid unto the said C. her Executors, Administrators or Assigns, the Sum of, &c. due to the said C. from the said B. in Consideration of his Taking the said C. G. Son of the said C. to be his Apprentice, and who is now discharged therefrom, and of all Charges of Suit in and about the same; and I award that the said Parties shall then also deliver up to each other, and cancel the said C. G.'s Indentures of Apprenticeship; which said several Sums of Money being paid, as aforesaid, I award shall be in full Satisfaction and Discharge; and that the said Parties do and shall, at the same Time and Place aforesaid, seal, execute, and deliver unto each other, his and her Executors and Administrators respectively, a sufficient Release and Discharge of, for, and from all Actions, Suits and Causes thereof, Bills, Specialties, Debts, Sums of Money,

The Compleat Arbitrator.

Money, Accounts, Judgments, Executions, Damages and Demands at Law and Equity, between the said Parties, as well concerning any the Accounts between them, as for and concerning the said C. G. and his Service aforesaid, or relating thereunto, and for and concerning any other Accounts, Cause or Thing, between the said Parties to the, &c.
In Witness, &c.

An Award, ordering a Master of a Ship to make Oath before a Magistrate of the Delivery of the Goods beyond Sea, and what sold for, and to procure a Testimony thereof from the Person delivered to; and upon so doing, ordering Money to be paid him, and a Bond, which he gave for the Sale of the said Goods, to be deliver'd up, &c.

TO all, &c. We A. and B. of, &c. send Greeting. Whereas Differences are arisen, and are depending between C. and D. of the one Part, and E. of, &c. Mariner, of the other Part, which said Differences the said Parties have referred to the Award and Determination of us the said A. and B. so as we should make our Award concerning the same, on or before the, &c. *Now know ye*, that we the said A. and B. having taken, &c. *(as usual)*: First, We award and order, that the said E. shall, within ten Days, make Oath

Oath before some Justice of the Peace, or other Magistrate of the City of London, that the two Bales of Merchandize shipped on board the Ship called the R. the said E. Master, in her late Voyage to *Barbadoes*, on account of the said C. and D. and consigned to the said E. and marked, &c. according to the Invoice of the said Goods, were *bona fide*, to the best of his the said E.'s Knowledge and Belief, sold in *Barbadoes* by Mr. N. for, &c. *per Cent.* Advance, and no more; and that he the said E. for the farther Proof thereof, and better Satisfaction therein, shall and do, by the first Opportunity, procure from *Barbadoes*.aforesaid, an Advice or Testimony thereof from the said N. confirming the same; and we further Award, that the said E. his Executors, Administrators or Assigns, do and shall, within twenty Days now next, truly pay, or cause to be paid unto the said C. and D. their Executors, Administrators or Assigns, or some or one of them, the Sum of — which we Award is to be, and shall be in full Satisfaction to the said C. and D. as well for a Box of Hats shipped on board the said Ship R. by the said C. and D. and mentioned in the Invoice aforesaid, which Hats were left by the said E. at *Barbadoes* aforesaid; as also in full of all Monies remaining in the Hands of, or any Ways due and owing to the said C. And further we award, that the said Box of Hats, and all Effects and Produce, shall remain and be for the proper Account only of the said E. and that the said C. D. shall do any further Act to make and confirm his Title and Interest

The Compleat Arbitrator.

terest in, and to the same: And lastly we Award that the said C. and D. shall, at the Time of Payment of the said, &c. as aforesaid, deliver up to the said E. a Bond or Obligation under his Hand and Seal, whereby he stands obliged for and concerning the Sale and Disposall of the said Goods, or for or concerning the same to be cancelled; that they shall then likewise discharge him the said E. from the said two Bales of Goods and Box of Hats, and all Actions, Suits, Accounts and Demands concerning them. *In Witness, &c.*

Another Form of an Award by three Arbitrators, wherein is a special Recital of the Matters to be performed.

TO all Christian People to whom this present Writing of Award indented shall come, A. B. C. D. and E. F. of, &c. send Greeting. *Whereas* divers Suits, &c. between T. W. and J. S. of, &c. for pacifying, composing, ordering, and ending whereof, the said T. W. and J. S. have bound themselves either to the other, in the Sum of One thousand Pounds of lawful, &c. by several Obligations bearing Date, &c. with Conditions there under written to stand to, *ut supra*, of the said A. B. C. D. and E. F. Arbitrators indifferently elected and chosen, as well on the Part and Behalf of the said J. S. as of the said T. W. to award, arbitrate, order, rule, judge, end and determine all Manner
of

of Actions, &c. depending between the said *J. S.* and the said *T. W.* so that the said Award were made and given up in Writing, under the Hands and Seals of all the said Arbitrators, &c. at, or before the, &c. at, or in the, &c. as by the said Obligations and Conditions amongst other Things doth and may appear. *Know ye now*, that the said *A. B. C. D.* and *E. F.* taking upon them the Charge and Burden of the said Award, and having deliberately heard the Allegations and Proofs of both the said Parties, do by these Presents arbitrate, award, order, decree and judge of and concerning the Premises, in Manner and Form following, that is to say, First they do award, order, decree and judge, by these Presents, that the said *J. S.* his Executor or Administrators, or some of them, at or before the, &c. at or in the, &c. Two hundred Pounds of, &c. and at or before the, &c. at or in the said, &c. other Two hundred Pounds of, &c. in full Satisfaction of 400 *l.* for Payment whereof the said *J. S.* stood bound to the said *T. W.* in and by four several Obligations, bearing Date, &c. whereof Two are already, &c. as thereby may appear: Also the said Arbitrators do award, &c. that the said *J. S.* his Executors or Administrators, or some of them, at their, or some of their Costs and Charges, shall, before the, &c. cause and procure, that all Suits, Bills and Informations heretofore commenced against the said *T. W.* in any Court or Courts whatsoever, either by or in the Name of the said *J. S.* or by or in the Name of *H. S.* his Son, or
by

The Compleat Arbitrator.

by or in the Name of our Sovereign Lord the King that now is, and of every or any of them, or by or in the Name of any other Person or Persons, by the Consent, Means and Procurement of them, or any of them, and before the, &c. be utterly discontinued and made void: And the said Arbitrators do further award, order, decree and judge by these Presents, that for the true Payment of the said Sum of 400 l. the said J. S. and G. S. within two Days next after Tender or Delivery of one Part of this present Award to the said J. S. shall well and sufficiently make, seal and deliver as their Deeds, to the said T. W. in, &c. one Obligation or Writing Obligatory, wherein and whereby the said J. S. and G. S. shall acknowledge themselves, or either of them, to be jointly and severally bounden to the said T. W. in the Sum of, &c. with Condition thereupon, in due Form of Law, endorsed or underwritten, for the sure Payment of the said Sum of Two hundred Pounds, of, &c. Parcel of Four hundred Pounds, at or in the, &c. before the, &c. and the other Two hundred Pounds, Residue of the said Sum of 400 l. at or before the, &c. and at, &c. Also the said Arbitrators do further award, &c. That the said J. S. his Executors or Administrators, or some of them, shall and will before, &c. at his and their own proper Costs and Charges, cause and procure to be cancelled and made void, one Recognizance of Two hundred Pounds, bearing Date the, &c. acknowledged and enrolled in his Majesty's High Court of Chancery, wherein and whereby the

the said *T. W.* stands bounden to the said *J. S.* in the said Sum, with Condition thereunto annexed, That if the said *T. W.* his Heirs, Executors and Administrators, and every of them, should well and truly observe, perform, fulfill and keep, all and singular the Covenants, Grants, Articles and Agreements, which on his and their Parts are to be observed, &c. contained and specified in one Indenture, bearing Date the, &c. had and made between the said *T. W.* of the one Part, and the said *J. S.* of the other Part, concerning the Marriage of *M. M.* Son and Heir apparent of the said *T. W.* and *A. S.* Daughter of the said *J. S.* according to the true Intent, Purport and Effect of the said Indenture; that then the said Recognizance to be void and of no Effect, or else to stand, &c. as by the said Recognizance and Indenture, Relation being thereunto had, doth and may more fully and at large appear: And also that the said *J. S.* his Executors or Administrators, or some of them, shall and will before the Feast of, &c. deliver, or cause to be delivered up unto the said *T. W.* the said Indenture of Covenant concerning the aforesaid Marriage, cancelled or to be cancelled; in Consideration whereof it is further ordained, awarded, decreed and judged by the said Arbitrators, That he the said *T. W.* do and shall, within two Days next after, &c. at, &c. make, &c. to the said *J. S.* In Witness whereof the said Arbitrators to both Parts of this present Award Indented have set their Hands and Seals, &c. Dated, &c.

The Compleat Arbitrator.

An Award made by Order of Chancery, to be confirmed by a Decree.

TO all Christian People to whom these Presents shall come, *A. B.* of, &c. and *C. D.* of, &c. send Greeting. *Whereas* by Order of the High Court of Chancery, bearing Date, &c. between *E. F.* &c. Plaintiff, and *G. H.* &c. Defendant; also between the said *G. H.* Plaintiff, and *E. F.* Defendant, it is ordered by and with the Consent of all the said Parties, that all the Matters and Differences contained and mentioned in the said several Suits, as they then stood in Court, should stand referred to us the said *A. B.* and *C. D.* and what Award or Order we should make therein, should be final and concluding to all Parties, so as the said Award were published under our Hands and Seals before the, &c. then next ensuing, as by the said Order, Relation being thereunto had, amongst other Things it doth and may more at large appear. Know ye, That we the said *A. B.* and *C. D.* having divers Times heard the Parties to the said several Suits, and examined the several and respective Allegations and Pretences therein contained, to the Intent, and that a final End and Conclusion may be of the said several Suits and Controversies, and to every Matter and Thing in Difference relating thereunto, between the said Parties, do hereby make and publish our Award touching and concerning all and singular

gular the Matters to us referred, as aforesaid, in Manner and Form following; that is to say, Whereas the said *E. F.* did, &c. First, We do order and award, that all and every the Plaintiffs and Defendants, in the said several Suits to us referred, shall seal and execute to each other such Releases touching all and every the Matters and Things contained or mentioned in the said several Suits, as by any of the said Parties to the said Suits shall, at any Time within a Year next ensuing, be reasonably required. And 2dly, to be at the only Costs and Charges of such of the said Parties in whose Behalf the same shall be required, so as the said Releases do not extend to bar or discharge any Matter or Thing hereby awarded to be done or performed. 3dly, We do award, That all and every the Suits between the said Parties to us referred shall cease, and that no other or further Proceedings or Prosecutions in Law or Equity, be at any Time hereafter had, commenced or prosecuted by them, or any of them, their Heirs, Executors or Assigns, for or concerning any the Matters or Things in the said several Suits contained; and that the Bills now depending against each other, shall be dismissed without Costs on either Side. *In Witness, &c.*

C H A P. VII.

How Awards have been construed in Equity.

THE Law and Practice of the Court of Chancery is, in most Respects, conformable to the Law and Practice of the other Courts of *Westminster*, in regard to its Proceedings, and the Construction it makes on Awards and Arbitraments, and for the most part requires the same Exactness and Conformity to Law that the other Courts do, with respect to the subject Matter submitted to the Submission, Parties to the Submission, the Arbitrators, and the Award that they make. But as this Court has in some Instances deviated from the Courts of Law, by decreeing Awards in the Nature of Agreements, and obliging the Parties to a specifick Performance of them; and likewise in being more ready in setting aside Awards, and freeing the Parties from their Obligations, when they were found unreasonable or injurious, by the Ignorance, Partiality, Dishonesty, &c. of the Arbitrators, than other Courts; it will not be improper in this Chapter, to set down all the Cases we have reported on this Head, in our Books of Chancery.

Sect. I. Concerning the Matter to be submitted.

Sect. II. Concerning the Submission.

Sect. III. The Parties to the Submission.

Sect. IV. Concerning the Arbitrators and Empire.

Sect. V. Concerning the Award, and for what Causes it shall be set aside.

S E C T. I.

Concerning the Matter to be submitted.

THE Court of Chancery regularly observes the same Method, with regard to the Matters proper to be submitted, that the other Courts do; and as it seldom assumes a Power more than others over Freeholds, Bonds, or Judgments, which are Things not properly Arbitrable, but are made so by the Parties entering into Bonds of Submission; so if any Application is made to this Court concerning those Things, it will, according to the Circumstances of the Case, either set aside the Award, and grant an Injunction

junction against the Bond, or will allow the Party (if it be deemed good) to take his Remedy at Law, by suffering him to enter Judgment on the Bond, &c. But see the following Case.

2. The Plaintiff and Defendant had submitted to an Arbitrament by Bond, and an Award was made, not binding by Form of, by which the Plaintiff was to pay the Defendant 900 *l.* and to seal a Release to the Defendant; and the Defendant was to assign several Securities he had from the Plaintiff; the Plaintiff sold some Lands to raise the 900 *l.* expecting the Defendant would receive it, as he gave him Intimation he would, and tendered him the 900 *l.* and a Release executed by the Plaintiff; and though there was no other Execution on the Plaintiff's Part of the Award, and though the Award was *extrajudicial*, and not good in Strictness of Law, yet the Lord Chancellor decreed it should be performed in *Specie*. Decreed between Norton and Mascall, Pasch. 1687. 2 Vern. 24, 25.

3. The Parties may consent to have their Submission made a Rule of this Court, as well as any other, but then it must be made and enforced pursuant to the Act of Parliament.

4. And if an Award is made pursuant to an Order of Court, the Party ought first to move the Court to confirm the Award, as is done upon a Master's Report, and either Side is at Liberty to except to it. 1 Vern. 469.

5. If an Award is made a Rule of Court, according to a Submission for that Purpose, and

and an Attachment is taken out for not obeying the Award, and then the Party dies, against whom the Attachment issues, the Act of Parliament is of no Effect, the Remedy being gone. *Mich. 1703, between Webster and Bishop, 2 Vern. 444.* So that a Submission by Bond may in some respects be better than a Submission by Rule of Court, as the former can be made to bind Executors.

S E C T. II.

Concerning the Submission.

1. **T**HE Submission in Chancery is usually by Rule of Court; but if Application is made to set aside an Award, or to stay the Proceedings on the Bond in another Court, the Submission is considered here in the same Light as at Law.

2. If the Submission to an Award be conditional, *Ita quod* an Award be made *de & super Premissis, &c.* then if the Award be not of the Whole, it is void; but if the Submission be not conditional as aforesaid, then, though the Award be but of Part of the Matter referred, it is good for so much as it settles, though it leave other Things at large, *per Lord Maynard, 2 Vern. 109.* And in this last Case an Award may be confirmed in Part, and made void in Part. *Vide 1 Chan. C. 40.*

Parties interested are before them between

S E C T. III.

The Parties to the Submission.

1. IF all the Parties to the Suit consent to refer the Matter to *J. M.* and *J. S.* one of the Parties signifies his Consent by signing a Paper to that Purpose, so that the Award be made by a certain Day therein limited, and no Award is then made; but afterwards the Court in the Presence of all the Parties (except *J. S.* who was absent) but his Solicitor consenting on his Behalf, refer it back to *J. M.* (but not finally to determine) who made an Award; and it was resolved, that the Solicitor's Consent should not bind his Client; though it was objected and admitted, that an Attorney's Assent to a Reference on Behalf of his Client, should bind him at Law. 18 *Car. 2.* between *Colewell* and *Child.* 1 *Chan. Cases* 86.

2. An Infant cannot be a Party to a Submission in Equity, neither will a Court of Equity decree an Award to bind an Infant, unless it plainly appears to be for the Infant's Advantage. 1 *Chan. Cases* 279.

3. If *A.* and *B.* Executors of *J. S.* on the one Part, and *C.* his Widow, on the other, submit to Arbitration, the Arbitrators may make an Award, not only of Matters in Dispute between *A.* and *B.* jointly, or *A.* and *B.* separately, and *C.* but also of Matters between *A.* and *B.* provided they have Knowledge of the whole Fact, and all the Parties

Parties Interested are before them. Between
Carter and Carter, 1 Vern. 259.

SECTION IV.

**Concerning the Arbitrators and
Umpire.**

1. IF the Submission to an Award be, so as
the Arbitrators make their Award at
or upon the 27th of *March* then next; and
if the Arbitrators make no Award, then if
the Umpire make his Umpirage on the same
Day. The Umpire cannot make his Umpirage
on the same Day, though the Arbitrators
disagree, for they have all that Day to make
their Award. 2 Vern. 100.

2. If by the Submission the Arbitrators
have Power to chuse an Umpire, and they
not agreeing, throw *Cross* and *Pyle* which of
them should name the Person; and the Um-
pire thus chosen makes his Umpirage; the
Court will set it aside. 2 Vern. 485.

3. If the Parties in Court sign an Order
by Consent, to refer their Matters to Arbi-
trators, finally to Determine, and their A-
ward to be final, and stand ratified by De-
cree without any Appeal, yet one of the
Parties may revoke this Submission; but then
the Court will grant an Attachment against
him. 1 Chan. Cases 185. Note; This was be-
fore the Statute of 9 & 10 W. & M.

4. There was a Submission by Order of
Court, and the Award was to be confirmed
without Appeal or Exceptions, yet upon De-

Parties

bate

bate Exceptions to the Award were admitted. 2 Vern. 109.

SECT. V.

Concerning the Award, and for what Causes it shall be set aside.

1. IF two submit themselves to the Arbitrament of J. S. of all Controversies, *ita quod*, &c. and J. S. makes an Award of Part only, so that the Award is void in Law, this shall not be made good in a Court of Equity; and a Prohibition granted to the Council of York accordingly. 1 Rol. Abr. 377.

2. If an Award differs from the Submission, it shall be as well void in Equity as at Law. 1 Chan. Cases 186.

3. The Plaintiff entered into a Bond of 50*l.* sufficiently to repair a House by such a Time, and he and the Defendant made two Arbitrators to be Judges of the Sufficiency of the Repairs; one of them alone declared that it was sufficiently repaired; but in an Action brought on this Bond, his Evidence was not allowed, because both were made Judges of it. Nel. Chan. Cases 87.

4. Upon a Submission, by Consent and Order of Court, an Award was made, that a Bond should be given by the Guardian, and that the Infant at his full Age should convey the Lands in Question. *Per* Lord Chancellor Nottingham, when the Parties themselves

selves chuse their own Judges, this Court will not relieve against the Award, unless it be in Case of Corruption, exceeding Authority, and the like; but when there is a Reference by Order of this Court, if it appear unequitable, the Court will not Decree it; and in this Case it being unreasonable that the Guardian should give such a Bond, for the Infant may die, or if he live to Age, may refuse to convey; and therefore he would not Decree it; and he further said, That he would never decree an Award to bind an Infant. 28 Car. 2. 1 Chan. Cases 279.

5. If the Arbitrators appear to have an Interest in the Cargo, touching which the Award is made, and therefore put too great a Value thereon, and in five Days after the Award made, the Money is attached by the Arbitrators, for Money owing to them, the Court will set aside the Award. *Hill. 1691. between Earle and Stocker, 2 Vern. 251.*

6. If a Submission is to three Arbitrators, or any two of them, and two of them by Fraud or Force will exclude the other, that alone is sufficient to vitiate the Award; or if they have private Meetings, and admit one of the Parties, but give no Notice to the other, but suffer the Party's Attorney whom they admitted, to draw up the Award, such Award shall be set aside for Partiality and Unfairness. *Mich. 1705. between Burton and Knight. 2 Vern. 514.*

7. If it appears that the Arbitrators went upon a plain Mistake, either as to the Law, or in a Matter of Fact, the same is an Error

The Compleat Arbitrator.

ror appearing in the Body of the Award, and sufficient to set it aside. 2 Vern. 705.

8. A Submission was to four Arbitrators, and if any Doubt appeared in the Award, it was to be explained by them; after the Death of one of the Arbitrators, one of the Parties suggests, that in a Conveyance of Lands which was to be made to him, and which was intended to be in Fee-simple, the Word *Heirs* was left out of the Award, and the three surviving Arbitrators certified, that their Intent was such; and it was Decreed that such Mistake should be amended, and the Party to have a Fee-simple accordingly. 1 Chan. Rep. 85.

9. The Plaintiff called the Defendant, who was a Butcher, *Bankrupt Knave*, which being submitted to Reference, the Arbitrators gave him 495*l.* to repair his Honour, (as they called it in the Award) and the Court thought the Damages too excessive, and set aside the Award, but directed a Trial at Law, and the Jury gave him 10*l.* 3 Chan. Rep. 76. 2 Vern. 251. S. C. cited, and there it is said, that the Court did not set aside the Award barely for excessive Damages, but because it appeared that one of the Referrees was the Butcher's Cousin. And see the next Case.

10. If Tenant for Life commits Waste to the Value of 380*l.* and his Estate is but 70*l.* per Annum, and an Action of Waste is brought against him by him in Remainder, and it is submitted to a Reference by a Rule of Court; but before any Award made the Tenant for Life repairs the Places wasted to 40*l.* and forbids

The Compleat Arbitrator.

221

forbids the Arbitrators, and likewise the Umpire, to proceed in making any Award; but notwithstanding, the Umpire awards the Party 380 *l.* yet the Court will not set aside the Award, though it was objected that 380 *l.* is near the Value of an Estate for Life of 70 *l. per Annum*, there appearing no Fraud or Collusion in the Matter. *Pasch. 1683. between Brown and Brown, 1 Vern. 157.*

11. If the Arbitrators award a Thing impossible, the Award shall be set aside; as if they award one to pay a Sum of Money the 24th of *January*, and the Award bears Date after the said 24th of *January*; so if it be repugnant; as if they award one to deliver up an Obligation of 800 *l.* in Satisfaction of 400 *l.* of 1000 *l.* which he was to pay, and to vacate a Suit in Satisfaction of 600 *l.* Residue, after the 400 *l.* and 600 *l.* satisfied.
1 *Chan. Cases 87.*

C. H. A. P.

C H A P. VIII.

Of Submissions made a Rule of Court, and Awards made thereupon.

Awards have frequently been made on Submissions, made a Rule of Court before the Statute of 9 & 10 *W.* as appears by several Cases. 1 *Sid.* 54. *Raym.* 35, &c.

And the Expediency and Usefulness of this Method in procuring the Parties a sure and speedy Remedy, being often experienced, was a Motive which contributed to the making the said Statute; as well as that thereby any Doubt or Dispute arising about the granting Attachments upon Non-performance of the Award, or Revocation of the Submission, should be wholly removed.

For before the making of the said Statute, the Courts were not so ready in granting Attachments; and in some Cases doubted whether any could be granted at all, as appears by the following Case.

An Action of Trover and Conversion being brought for a Ship's Tackling, &c. and several Actions of Trespass were, by the Consent of all the Parties, submitted to the Determination of Chief Baron *Hale*; and such Submission was made a Rule of Court; but before the making the Award, the Party against whom the Action was brought re-
voked

voked the Submission; and though it was strongly urged that this is such a Contempt, for which the Court has several Times granted Attachments, yet they refused it in this Case, and said, the Party grieved may bring his Action on the Case. 1 Sid. 452.

But now by the 9th and 10th of Will. Chap. 15. it is enacted, *That it shall and may be lawful for all Merchants and Traders, and others, desiring to end any Controversy, Suit or Quarrel, Controversies, Suits or Quarrels, for which there is no other Remedy but by Personal Action or Suit in Equity, by Arbitration to agree, that their Submission of the Suit to the Award or Umpirage of any Person or Persons, should be made a Rule of any of his Majesty's Courts of Record, which the Parties shall chuse, and to insert such their Agreement in their Submission, or the Condition of the Bond or Promise, whereby they oblige themselves respectively to submit to the Award or Umpirage of any Person or Persons; which Agreement being so made, and inserted in their Submission or Promise, or Condition of their respective Bonds, shall or may, upon producing an Affidavit thereof, made by the Witnesses thereunto, or any one of them, in the Court of which the same is agreed to be made a Rule, and reading and filing the said Affidavit in Court, be entered of Record in such Court, and a Rule shall thereupon be made by the said Court, that the Parties shall submit to, and finally be concluded by the Arbitration or Umpirage which shall be made concerning them by the Arbitrators or Umpire, pursuant to such Submission; and in Case of Disobedience to such Arbitration or Umpirage,*

pirage, the Party neglecting or refusing to perform and execute the same, or any Part thereof, shall be subject to all the Penalties of contemning a Rule of Court, where he is a Suitor or Defendant in such Court, and the Court on Motion shall issue Process accordingly, which Process shall not be stopped or delayed in its Execution, by any Order, Rule, Command or Process of any other Court, either of Law or Equity, unless it shall be made appear on Oath to such Court, that the Arbitrators or Umpire misbehaved themselves, and that such Award, Arbitration, or Umpirage, was procured by Corruption or other undue Means.

And be it further enacted by the Authority aforesaid, That any Arbitration or Umpirage, procured by Corruption or undue Means, shall be judged and esteemed void and of none Effect, and accordingly be set aside by any Court of Law or Equity, so as Complaint of such Corruption, or undue Practice, be made in the Court where the Rule is made for Submission to such Arbitration or Umpirage, before the last Day of the next Term, after such Arbitration or Umpirage made and published to the Parties: Any Thing in this Act contained to the contrary notwithstanding.

As this Statute has removed any Doubt that might have been, concerning the Power of the Courts in enforcing the Performance of Awards made on Submissions by Rule of Court; and as Awards have since been most frequently made according to the Directions of the said Act, I shall in this Chapter consider;

Sect. I. How the Submission is to be made a Rule of Court.

Sect. II. What shall be a Breach of the Rule.

Sect. III. The Method of enforcing the Performance of Awards, made pursuant to a Rule of Court.

Sect. IV. What shall excuse the Non-performance of the Award.

S E C T. I.

How the Submission is to be made a Rule of Court.

1. **T**HE Parties may signify their Consent in Court, when the Matters in Controversy are submitted to the Determination of the Foreman, or a certain Number of the Jury; or they may do it by adding a Clause at the end of the Bonds of Submission and their Conditions; or they may signify their Consent by signing a Note or Memorandum in Writing, for that Purpose, in the Presence of one or more Witnesses.

2. When they signify their Consent by adding it to the Bonds of Submission, the Words may be in this Manner :

Q

And

The Compleat Arbitrator.

And it is hereby agreed by and between the said Parties, that these Presents, and the Submission hereby made of the said Matters in Controversy, shall be made a Rule of his Majesty's Court of King's Bench, to the End the said Parties in Difference shall be finally concluded by the said Arbitration, by these Presents intended, pursuant to the late Act of Parliament in that Case made and provided.

3. Or if there are no Bonds of Submission, the Parties may signify their Consent thus:

Memorandum this first Day of, &c. A. B. and C. D. being desirous to end and determine divers Controversies, Suits and Quarrels, that have been between them (for which there is no other Remedy but by Personal Action or Suit in Equity) did agree to submit, and did submit and refer all the said Controversies, Suits and Quarrels, to the Award of E. F. and G. H. Arbitrators indifferently chosen between them, to be made in Writing, under the Hands and Seals of the said Arbitrators, before the, &c. Day of, &c. next ensuing; and the said Parties did mutually promise and oblige themselves respectively, that they will perform and execute such Award as the Arbitrators shall make in the Premises: And the said Parties did further agree, that their said Submission should be made a Rule in his Majesty's Court of Common Pleas (or King's Bench) at Westminster; and that they will finally be concluded by the Arbitration that shall be made concerning the Premises, by
the

the said Arbitrators, pursuant to such Submission.

4. The Parties thus consenting, Affidavit must be made thereof, which being moved by Counsel, the Court will of Course grant the Motion, and make it a Rule.

5. A Submission was to an Award by Bond, and in the End of the Condition of the Bond was this Clause: *And if the Obligor shall consent that this Submission shall be made a Rule of Court, that then, &c.* Upon Motion to make this Submission a Rule of Court, according to the new Act of Parliament, it was opposed, because these Words do not imply his Consent; but if he would forfeit his Bond, he need not let it be made a Rule of Court; yet because this Clause could not be inserted for no other Purpose, the Court took these conditional Words to be a sufficient Indication of Consent, and made the Award a Rule of Court. Between *Baily and Cheesely*, 13 W. 3. 1 Salk. 72.

6. A Matter being referred by Rule of Court, to the Determination of the Judges of Assize, it was moved, that the Judges Determination might be made a Rule of Court. *Et per Holt*, Chief Justice, where a Matter is referred to Arbitrators by Rule of Court, and they make their Award, we will compel a Performance of it, as much as if the Award were Part of the Rule; so a new Rule is needless. 1 Salk. 71.

S E C T. II.

What shall be a Breach of the Rule.

1. **N**OT only the not performing the Award is a Breach of the Rule, but likewise, if either of the Parties shall do any Act which may prevent the Arbitrators from making the Award; as, if they revoke the Authority, &c.

2. A Matter was referred by Consent at *Nisi Prius*, to the three Foremen of the Jury, and before the Award was made, one of the Parties served the Arbitrators with a *Subpoena* out of Chancery, which hindered the proceeding to make the Award: And the Court held this a Breach of the Rule, and granted an Attachment, *nisi causa*. Between *Davila* and *Almanza*, 1 Ann. 1 Salk. 73.

3. Upon a Submission to the Award of the three Foremen of the Jury, who made their Award, the Defendant moved to set it aside, because they went on without giving him Time to be heard, or produce a Witness; and *Holt* said, That the Arbitrators being Judges of the Parties own chusing, the Party shall not come and say, they have not done him Justice, and put the Court to examine it; *aliter*, when they exceed their Authority: However, the Award was examined and confirmed; and the Plaintiff moved for an Attachment for not performing it; and the Court held, That the Non-performance, while

while the Matter was *sub Judice*, was no Contempt, and then the Plaintiff moved for his Costs, and that was denied; upon which *Powel*, Justice, said, that seeing they could not give the Party any Costs, he should never be for examining into Awards again. Between *Morris* and *Reynolds*, 2 *Ann.* 1 *Salk.* 73.

4. Upon a Submission by Order of Court to a Reference, and the Award to be made to be confirmed by the Decree of the Court, without Appeal or Exception; yet upon Debate, Exceptions to the Award were admitted. 2 *Vern.* 109.

S E C T. III.

The Method of enforcing the Performance of Awards, made pursuant to a Rule of Court.

1. **W**HEN the Award is made, if one of the Parties refuse to perform it, the other must move the Court for an Attachment to compel him; which Motion must be founded on an Affidavit, that the Award was made according to the Terms of the Submission; and must likewise set forth, That the Party who moves for the Attachment, has performed what on his Part was awarded to be done, previous to any Thing to be done by the other Party; but the Award it self need not be annexed to such Affidavit. And *Note*, That upon the first Application the Court grants a Rule, that the Party shall shew Cause why an Attachment

The Compleat Arbitrator

should not be granted by such a Day; which if he neglects to do, the Rule upon a second Motion for that Purpose will be made absolute.

2. When the Defendant is taken on an Attachment, he gives a Bail-Bond to the Sheriff, and at the Return of the Writ, appears not by Attorney, but Personally in Court; and then enters into a Recognizance to appear there *de die in diem*, till the Court shall otherwise determine them; upon Motion by Counsel the Court Orders, that unless his Adversary exhibits Interrogatories against him within four Days after Notice, he shall be discharged; the Interrogatories must be filed with the Secondary of the Office, and by him the Defendant must be examined, being first sworn before a Judge to deposite the Truth; after his Examination the Prosecutor takes Copies of his Depositions, and if he finds all denied, he brings up his Witnesses to prove the Contempt *viva voce* in Court, where the Defendant must appear to confront them, and answer the Questions the Court shall demand; and if the Court judge him guilty of the Contempt, they commit him; if not, he is discharged: If he neglects to appear before the Secondary to be examined, or afterwards before the Court upon his Purgation, the Court, on Motion, will order his Recognizance to be estreated: If he confesses any Thing material in his Depositions, it is not necessary to send for Witnesses, but move on his Confession, and pray the Court's Order therein.

3. *A.* having bound himself to stand to the Award of *J. S.* which Submission was made a Rule of Court, according to the Act of Parliament; the Party for whose Benefit the Award was made, moved the Court for an Attachment for Non-performance; which was granted: Pending that, he brought an Action of Debt upon the Bond, and it was moved that he might not be allowed to proceed both ways; and it was endeavoured to be likened to the Cases where the Court stay Actions on Attornies Bills, while the Matter is under Reference before the Master; but the Motion was denied; and this Diversity taken, where the Court relieves the Party by way of Amends in a summary Way; as in the Case cited there it is reasonable; otherwise here, where the Plaintiff has no Satisfaction upon the Attachment; and the Defendant was put to answer Interrogatories. 1 *Salk.* 73, 74.

4. If a Rule be made at *Nisi Prius*, to refer a Matter to the three Foremen of the Jury, and that the Plaintiff shall have a Verdict for his Security; after the Award made, the Plaintiff may either enter up Judgment on the Verdict, or have an Attachment for not obeying the Rule of Court, it being in his Election which Way he will execute the Award: And this was affirmed by Mr. *Northey*, and at the Bar, to be the constant Practice; *Tourton* and *Gould* (in the Absence of the Chief Justice) doubted of it, because the Verdict stood still on Record: To which *Northey* answered, There could not be a Judgment entered on such Verdict without

Leave of the Court, and the Attachment was granted. Between *Hale* and *Mister*, 11 *W.* 3. 1 *Salk.* 84.

5. A Matter in Difference, having upon the Hearing been referred by the Court to Gentlemen in the Country, who had made an Award therein, the Cause was set down to be heard upon the Matter of the Award, but was thrown off, as coming on irregularly, for that the Plaintiff ought first to have moved to confirm the Award, as is done upon a Master's Report, and either Side may except to it, if they find Occasion; and then the Matter will properly come before the Court on these Exceptions. 1 *Vern.* 469. *Note*, This was before the Act of Parliament.

6. *A.* and *B.* having submitted to an Award, which was made a Rule of Court, and an Attachment issued out against *A.* for not performing the Award; *A.* was afterwards found a *Lunatick*, and *B.* took out a *Subpana Scire Fac.* against the Executrix and Heir, to carry on the Rule of Court to an Execution; and it was held by the Court, That the Act of Parliament directing it to be carried on by Attachment, as is done in other Courts, for disobeying a Rule of Court, by the Death of the Party the Attachment is gone, and the Remedy lost. 2 *Vern.* 444.

S E C T. IV.

What Hall excuse the Non-perfor-
mance of the Award.

1. **T**HE Arbitrators being Judges of the Parties own chusing, the Law will not countenance any Complaints by reason of Severity or Inequality in the Award; neither will the Court require such Exactness as to the Formality of the Award when the Submission is made a Rule of Court, as if it were by Bond or otherwise; and therefore there must be some notorious Defect in the Award it self, or some Fault in the Arbitrators, such as Partiality, &c. which will excuse the Party from not performing it.

2. However, it is necessary that the Arbitrators, as in other Cases, enter on their Duty, and make their Award within the Time allotted them by the Submission.

3. And that if there be an Umpire, that he makes not his Umpirage till the Time allowed the Arbitrators be expired.

4. As where the Submission to an Award was, so that the Arbitrators make their Award at or upon the 27th of *March* then next ensuing; and if they make no Award, then if the Umpire make his Umpirage on the same Day; it was resolved, that the Umpire could not make his Umpirage on the said 27th of *March*, the Arbitrators having all that Day to make their Award. 2 *Vern.* 100.

5. But

5. But herein a Diversity is taken, when the Umpire is named in the Submission, and when the Arbitrators have a Power of nominating him; for in the first Case, the Umpire can by no Means make his Umpirage, by reason of the Inconveniency of having a concurrent Jurisdiction. 1 *Salk.* 71.

6. But if the Arbitrators are to name him, he may make his Umpirage on the same Day limited to the Arbitrators, and it will be good, for they had determined their Power before, by chusing an Umpire. 1 *Lev.* 174. 1 *Salk.* 72.

7. The Umpire must be chosen upon condition that he does accept the Umpirage; for it is said, that if the Arbitrators chuse one, their Authority is executed, and they cannot revoke or chuse again, though the Person elect refuse to accept. 1 *Salk.* 70. But of this see the 6th Chapter.

8. It is held by my Lord Chief Justice *Holt*, That, where an Award is made by Rule of Court, it shall not be set aside, unless there was Practise with the Arbitrators, or some Irregularity; as want of Notice of the Meeting; also you shall not take Exceptions to the Formality of it, but shall perform it. 1 *Salk.* 71.

9. It was likewise held by *Holt*, That an Attachment lies not for not performing an Award made upon a Rule of Court, without a Personal Demand; and he said, he remembered the first Attachment of this Kind, which was in Sir *John Humble's* Case, in *Kelynge's* Time; in which, and ever since, a Personal Demand has been thought necessary, and said

said further, that in such Cases of Awards, though they be not legally good, Attachment lies for Non-performance; *aliter* if impossible; but the Party is excused as to that Part which is impossible only. Between *Forster and Bruvetti*, 1 *Salk.* 83.

10. But if Money be awarded to be paid such a Day, at a certain Place, between the Hours of Twelve and Two, it is sufficient for the Party to shew, that he attended at the Time and Place aforesaid, and that there was no Body to pay him.

11. If the Award be not in Writing, the Party shall be excused, whether the Terms of the Submission required it or not, the Judges thinking it improper to allow of a Matter which lays so great a Foundation for Perjury.

12. An Award was set aside, the Arbitrators appearing to have an Interest in the Cargo, touching which the Award was made, and therefore put too great a Value thereon; and in five Days after the Award made, the Money awarded was attached by the Arbitrators, for Debts owing to them. 2 *Vern.* 251.

13. And in this Case a Precedent was quoted, where an Award was set aside, because the Arbitrators had promised to hear Witnesses, but made their Award before they had so done.

14. And likewise another Precedent, where the Arbitrator promised not to make his Award till one of the Parties (who was not well) should come abroad; but notwithstanding proceeded, and my Lord *Nottingham*, for that reason, inclined to set it aside.

15. When

15. When a Submission is unto three, or any two of them, if two by Fraud or Force will exclude the other, that alone is sufficient to vitiate the Award. 2 Vern. 515.

16. If it appears that the Arbitrators went upon a plain Mistake, either as to the Law, or in a Matter of Fact, the same is an Error appearing in the Body of the Award, and sufficient to set it aside. 2 Vern. 705.

C H A P. IX.

Pleadings in Awards and Arbitraments.

AS Pleading in general is allowed to be the most nice and difficult Part of our Law, and as an infinite Number of Causes of all Kinds have been lost or delayed for want of a right Observance of the Rules of Pleading, it is necessary in the Case of Awards, (which has partaked of these Difficulties as much as any other Branch whatsoever) to be cautious and exact in all the Proceedings, particularly in setting forth the Award, and assigning a Breach; otherwise, let it be in other Respects ever so conformable to the Rules of Law, the Party will be disappointed of his End, if he fail in this Particular; it is therefore necessary to consider the

the following several Parts of the Pleadings, distinctly and separately.

Sect. I. Concerning the Declaration, and the Manner of setting forth the Award therein.

Sect. II. Concerning the Plea of the Defendant, whether relating to the Performace of the Award, or when, and in what Manner he may plead the Award in Bar of any other Action.

Sect. III. Of the Replication and Manner of setting forth the Award, and assigning a Breach.

Sect. IV. Of the Rejoinder, when it shall be a Departure or not.

Sect. V. Of Demurrers, either to the Declaration, Plea, Replication, &c.

Sect. VI. Precedents of Pleadings in Awards.

SECT.

S E C T. I.

Concerning the Declaration, and
the Manner of setting forth the
Award therein.

1. **A** Declaration is a Complaint of the Party grieved, setting forth the Cause of his Action against the Person he supposes to have done him wrong, or by whom he has received some Damage.

2. The Declaration ought to be true, clear and certain, and this Certainty ought to be sufficient in three respects: As 1st, Where on an Issue being joined the Jury may give a Verdict without being inveigled. 2dly, Sufficient Certainty to which the Defendant may answer directly. And 3dly, Whereon the Court may judge certainly and truly.

3. The Plaintiff generally declares on the Bond of Submission, in which Case he is not obliged therein to set forth the Award; and for which Reason we have but few Cases relating to the Manner of setting forth the Award, when the Submission is by Bond before the Plea or Replication.

4. But if an Action be brought on the Award it self, the Party must be very careful how he sets it forth in his Declaration; at least he must shew the Substance of it, and especially that Part which intitles him to his Action:

3. If

5. If in an Action of Debt upon an Award, the Plaintiff declares, that the Arbitrators did make an Award, that the Defendant should pay unto the Plaintiff 10 l. &c. this is a good Declaration, though nothing is shewn to have been awarded on the other Side; for it is sufficient for the Plaintiff to set forth that Part of the Award which entitles him to his Action. 1 Leon. 72.

6. In the Declaration it is not necessary to lay the Time or Place where the Award or Submission were made; but if the Defendant denies either, the Plaintiff may reply, that the Award or Submission was made at such a Place. 2 Brownl. 137.

7. But when an Award is pleaded in Bar of a Trespass, a Plea must be laid where the Submission was made. Cro. Eliz. 66.

8. It has been adjudged, that the Plaintiff need not set forth a *Profert* thereof in *Curia*, because it is no Deed. Style 459.

9. If there be a Submission to the Award of J. S. so as the said Award be made under his Hand and Seal, at or before the 5th Day of Sept. following, ready to be delivered at the Shop of J. N. in the Exchange, London; and in an Action of Debt upon an Award made thereupon, the Plaintiff declares that the said J. S. under his Hand and Seal the 4th Day of September following, *apud Castrum Eborum*, did make an Award *ad tunc & ibidem parat* to be delivered at the Shop of the said J. N. in the Exchange, London; this is no good Declaration; for the Parties are not bound to take Conusance of the Delivery elsewhere than at the Place appointed; by

by *Dod.* and *Houghton*, contra *Mountague*, Chief Justice, who held the Publication there, and Allegation, that it was ready to be delivered at the said Shop in London, was well enough. *Cro. Jac.* 577.

10. In Debt upon a Bond, conditioned for the Performance of an Award, *ita quod* it be made, and ready to be delivered to the Parties, at a certain Day and Place; the Defendant pleads *Nullum fecerunt Arbitrium*, and the Plaintiff replies and sets forth an Award made and delivered to the Parties at another Day and Place. Adjudged that this is good, being delivered to the Parties themselves, tho' at another Day and Place: But *per Hale*, the Replication is not good, for being but the Execution of an Authority, it ought to be done at the same Day and Place. *2 Lev.* 68.

11. There is a Diversity taken, when the Plaintiff sets forth the Award in his Declaration, and when the Defendant pleads it; in the former Case, it is sufficient for the Plaintiff to shew, that *inter alia* it was awarded; but when the Defendant pleads it, he must set forth the whole Award. *Lit. Rep.* 312, 313.

12. In an Arbitrament it was held by the Court, that if two Things be awarded, the one within, and the other not within the Submission, the later is void, and the Breach must be assigned only upon the first. *2 Mod.* 309.

S E C T. II.

Concerning the Plea of the Defendant, whether relating to the Performance of the Award, or when, or in what Manner he may plead the Award in Bar of any other Action.

1. IF an Action of Debt be brought on the Bond of Submission, the Defendant is estopped by the Obligation, and cannot plead *non submisit*, but he may plead *nilhum fecerunt Arbitrium*, or he may plead the Award Specially; to which the Plaintiff may Demur or Reply. 1 Rol. Abr. 873.

2. In Debt upon a Bond for Performance, &c. the Defendant cannot plead Performance generally, but must shew the Award, and how he has performed it. Moor 3.

3. If in Debt upon an Obligation, conditioned for the Performance of the Award of J. S. the Defendant pleads, That whereas there was a Suit in Chancery by the now Defendant, against the now Plaintiff, for such a Cause, &c. the said J. S. did award, that the said Suit should cease, and that the now Plaintiff should stand acquitted *de qualibet materia in eadem contenta*, and avers that he did not any further prosecute the said Suit, but that the now Plaintiff always after *Stetit inde Quietus*; this is a good Plea without shewing any Discharge in Facto; and
R the

The Compleat Arbitrator.

the Award being, that he *Staret acquietatus*, it is no more than that by that Award he should be acquitted. *Cro. Jac.* 339.

4. If an Award be, to pay the Rent mentioned in such an Indenture, in Debt upon a Bond conditioned for Performance thereof, the Defendant in pleading Performance need not set forth the Indenture, but refer generally to it; but if it be to be paid in such Manner and at such Times as is expressed in the Indenture, then it must be set forth at large; so if an Award be to pay Money given by a Will. *1 Vent.* 87.

5. It must be strictly observed, that where the Defendant pleads Performance, he must regularly plead it according to the Words of the Condition.

6. As where the Condition of the Bond of Submission was for Performance of the Award, so that it be made *de Premissis vel aliqua Parte inde*, and the Defendant pleads, that the Arbitrators made no Award *de Premissis*, without saying *nec de aliqua Parte inde*, and it seemed not to be good. *2 Mod.* 27.

7. But of Matter of Excuse, as that it became impossible by the Act of God, &c. it is otherwise. *2 Mod.* 27, 28. *2 Salk.* 520.

8. The Condition of a Bond of Submission was, so that the said Award be given up in Writing, &c. and the Defendant pleaded *non Deliberaverunt in Scriptis*; and it was adjudged naught, and that it ought to have been *non reddiderunt in Scriptis*. *N. Bendl.* 97.

9. Concerning the Defendant's pleading Tender and Refusal, it must be observed

ved in general, that where a Man is bound in an Obligation conditioned to pay a certain Sum of Money at such a Day, Tender and Refusal at the Day, without saying *uncore Prist*, is not a good Plea, but he ought to say *ad hoc paratus*, and tender the Money in Court.

10. But it is otherwise, if the Condition of the Bond be to do a collateral Act, as to deliver Timber, stand to an Award, &c. Co. Lit. 207. 9 Co. 79. a.

11. In Debt upon an Obligation, whereby the Defendant and two others were to perform an Award, made betwixt them and the Plaintiff; the Defendant pleaded the Award, which was, That the Defendant should pay the Plaintiff 20 s. and each of the others 20 s. a-piece, and that he tendred the 20 s. accordingly, which the Plaintiff refused to accept.

12. The Plaintiff replied, That at a Day after the Refusal he demanded the said 20 s. of the Defendant, which the Defendant then refused to pay him; and the Defendant demurred; and it was held that the Replication was idle, for the 20 s. being a Sum collateral to the Obligation, was lost for ever by the first Refusal.

13. But then it was resolved that the Bar was ill, as answering only to Part, *scil.* the 20 s. to be paid by himself, and not to the other Sums to be paid by others, and he is answerable for all; and then the Defendant pleading a collateral Matter, which is insufficient in Law, the Plaintiff needs not assign a Breach; and so Judgment was given for the

Plaintiff. Between *Gonne* and *Thker*. 3 *Lev.*

24. *But Tender of a Sum of Money*

awarded to be paid in an Action of Debt on the Award, is not sufficient without pleading *uncore Prist*; but Tender of an Award to the Defendant, and that none came on his Part to receive it, is good. *Lev. Entr. 44.*

If an Award be made by the Arbitrators, and signed and sealed by them, and by it they award a Sum of Money to be paid, the Defendant cannot plead the Statute of Limitations to an Action brought on the said Award; adjudged 2 *Sand. 65.*

15. As to the pleading of an Award to an Action, it is laid down as an uncontroverted Rule, that where Accord may be pleaded to any Action, there an Award may. 6 *Co. 44.*

16. It has been held formerly, that an Accord is not any Bar of an Action, unless it be executed, because the Plaintiff hath not any Means to recover that which he ought to have by the Accord. 1 *Roll. Abr. 129.*

17. And therefore it has been held the safest and best way of pleading an Accord, to plead it by way of Satisfaction, and not by way of Accord; for if it be pleaded by way of Accord, a precise Execution thereof in every Part must be pleaded; and if there be a Failure in any Part, the Plea is insufficient; but if it be pleaded by way of Satisfaction, the Defendant need plead no more, but that he paid the Plaintiff 10 l. in full Satisfaction of the Action which he received. 9 *Co. 86.*

18. Of

18. Of late, indeed, it hath been held, that upon mutual Promises an Action lies, and consequently there being equal Remedy on both Sides, an Accord may be pleaded without Execution, as well as an Arbitrament.

Raym. 430. 2 Jon. 158.

19. It has been formerly held, that an Award could not, except in certain Cases, be pleaded to an Action, unless it were executed; as where in Trespass the Defendant pleaded an Arbitrament in Bar, that the Defendant should pay to the Plaintiff twenty Shillings, &c. to which the Plaintiff demurred, because he did not alledge Performance of the Award, and the Demurrer was allowed. *Cro. Eliz. 66.*

20. So if an Award be to pay Money at a certain Day, in Satisfaction of an Action, if the Money be not paid at the Day, this Award is no good Bar of an Action, though he may have Debt on the Award, because it was his Fault that the Money was not paid, and therefore he shall not compel the Plaintiff to bring an Action on the Award, and bar the first Action. *49 E. 3. 3.*

21. But if an Award be, that one shall pay 10 l. to the other in Satisfaction of all Trespasses, &c. if he who ought to pay it tenders it at the Day, and he refuses, and after brings an Action for the Trespass aforesaid, this Award shall be a good Bar of the Action, because it was his own Fault that it was not paid, and he hath his Remedy for the Money. *1 Rol. Abr. 267.*

22. So if A. and B. submit themselves to the Award of J. S. of all Actions; who a-

The Compleat Arbitrator.

wards that *A.* shall make an Obligation which shall be labelled with Wax, and shall bring it to *B.* and *B.* shall seal it to *A.* in Satisfaction, &c. if *A.* does never bring the Obligation to *B.* to seal, yet this Award shall be a Bar of Actions brought by *A.* which are within the Award, though he hath no Means to compel *B.* to enter into an Obligation, because the Default was in himself. § *B.* 4. 7.

23. In Trespass (says my Lord Chief Justice Holt) it was held heretofore, that an Award of a collateral Thing in Satisfaction, was no good Plea, unless the Defendant shewed a Performance; for they likened this to an Accord and Satisfaction, which is no Plea, unless it be executed; yet they held, that where the Award was not of a collateral Thing, but of a Sum of Money, that such an Award was a good Plea; and the Reason of the Difference which they went upon was, that there was a Remedy to be had upon the Arbitrament in the latter Case, not in the former: But now the Law is held otherwise, and an Arbitrament is a good Plea, whether it be of Money or a collateral Thing, as a Hat or a Horse; and the Reason is, because the Submission is a mutual Promise, upon which an Action lies, and Performance need not be averred in either Case, for the Remedy is alike. But *Powell* held, that it must be averred where the Award is of a collateral Thing. 1 *Salk.* 76.

24. So when the Plaintiff declared upon three *Assumpsits*, whereof two were Special, *scilicet*, that the Defendant being indebted

to

to the Plaintiff in such a Sum, he *in consideratione inde* promised to Ship such a Quantity of Cotton Wool at Antegoe, and consign it to the Plaintiff; and also, whereas he was indebted to the Plaintiff in such other Sum, for Wares and Merchandizes sold and delivered, he *in consideratione inde* promised to pay the Money to the Plaintiff, if he (the Defendant) did not Ship and consign so much Cotton Wool to the Plaintiff; and the third Promise was upon a general *Indebitatus Assumpsit* for Wares, &c. sold and delivered.

25. The Defendant pleaded generally as to all (*viz.*) that since the said Promises, he and the Plaintiff had submitted themselves and all Matters, &c. to Arbitrators, who made their Award, which he set forth in his Plea, and concluded in Bar, without alledging that he (the Defendant) had performed the Award on his Part.

26. And upon a Demurrer to the Bar, it appeared that the Award was particular as to the Cotton Wool, and not of any other Matter, and as to that likewise it was but conditional, and therefore void: And in arguing this Case the following Diversities were taken by the Court to be Law.

27. 1st, That an Award without Performance is a good Bar to an Action on the Case, if the Parties have mutual Remedies against each other to compel the Execution of the Matters awarded; but it is otherwise where there are not mutual Remedies to enforce the Performance, &c.

28. 2^{dly}, That the Award now pleaded, being but conditional, and therefore void,

and by Consequence the Plaintiff having no Remedy to enforce the Performance, 'tis no Bar to his Action.

29. 3dly, This Award being particular, and only concerning the Cotton Wool, the Defendant should have pleaded it in Bar only of those Promises concerning the said Wool, and not in Bar of a general *Indebitatus Assumpsit* for Wares sold, but he should have pleaded *non assumpsit* as to that Promise, because the Award did not extend to it.

30. But if this Award had been general, and a good Award, the Defendant might have pleaded it in Bar of all the Promises generally, as here he had done; and that such Plea would not have amounted to the general Issue, because the Defendant, by pleading the Award after the Promises made, had admitted the Plaintiff to have Cause of Action upon the Promises; but that he was barred by the Award, and an Admission even of a Colour of Action, is sufficient to prevent the Pleading to amount to the general Issue, and the Plaintiff had Judgment. *Carth.* 187, 188.

31. And in *Salk.* 69. it has been held, that an Award may be a good Plea in Bar, though it be not performed, wherever the Award does give a new Duty in lieu of the former, for a Submission implies a Promise to perform; so that the Party has a Remedy for that which is awarded; but where the Intent of the Award is not to discharge the old Duty of it self, and give a new one, but barely to cause a Discharge of the old Duty, not by the Award it self, but by a Release,

as in the principal Case, the Award is no Plea in Bar of the old Duty. But a *Quere* is added, Whether an Award unperformed, though it gives a new Duty, can be a good Plea after the Time of Performance is elapsed.

S E C T. III.

Of the Replication and Manner of setting forth the Award, and assigning a Breach.

1. **I**T is necessary for the Plaintiff in his Replication, if the Defendant pleads *Nul- lum facerunt Arbitrium*, to set forth the whole Award, or at least so much of it, as that the Court thereby may be able to judge whether he is intitled to his Action, or not; for want of which the Plaintiff has been often delayed, if not disappointed in his Action.

2. As where in an Action of Debt upon a Bond, conditioned for the Performance of an Award, the Defendant pleaded, that the Arbitrators made an Award, That the Defendant should pay to the Plaintiff 3100 *l.* and should give to the Plaintiff a general Release; and the Defendant pleaded that he had paid the Money, and given a Release accordingly, but did not shew what on the Part of the Plaintiff was awarded to be done; and the Plaintiff replied without shewing the other Part of the Award in his Replication, and took Issue, that the Defendant had not paid

paid the Money; and the Defendant put in an insufficient Rejoinder; upon which the Plaintiff demurred; and it was held by the Court, that the Plaintiff could not have Judgment, because the Award, as set forth and agreed in Pleading, is void; but if the Plaintiff would have helped himself, he ought to have shewn the other Part of the Award before he had taken Issue; but the Court would not give Judgment for the Defendant, but suffered the Plaintiff to discontinue, because they apprehended it to be only a Trick in Pleading; for which the Chief Justice reprehended *Sanders*, who excused himself by reason of the Severity of the Award. *Between Veal and Warner, 1 Sand. 326, 327.*

3. If in Debt upon an Obligation, conditioned for the Performance of an Award, the Defendant pleads *Nullum facerunt Arbitrium*, and the Plaintiff replies, and shews the Award, he must also shew the Breach, without which he hath no Cause of Action; for the Obligation is guided by the Condition; and though the Defendant can make no Answer to the Breach, yet it ought to appear to the Court that the Plaintiff hath a Cause of Action. *Telv. 152.*

4. And the Reason hereof, as said *arguendo, 1 Sand. 102.* is, because an Award may be good in Part and void in Part, and perhaps the Action may be brought upon the void Part.

5. If in Debt upon an Obligation conditioned for the Performance of an Award, the Defendant shews that the Arbitrators did make an Award, that the Defendant before
such

such a Day should pay to the Plaintiff 100 l. or otherwise should procure one A. being a Stranger, to be bound to the Plaintiff for the Payment of 12 l. per Annum to the Plaintiff for his Life; and the Defendant pleads, that he hath performed the said Award; and the Plaintiff replies, that the Defendant hath not paid the said 100 l. without saying, nor hath procured A. &c. yet this is a good Replication, for the Award as to that Part is meerly void, and therefore the Plaintiff need not take Notice thereof. 1 Leon. 304.

6. So if the Award be, that the Defendant, together with a Stranger, shall enter into a Bond in the Assignment of a Breach, the Plaintiff must not say that the Defendant and Stranger did not enter into a Bond, for though both did not, yet the Defendant alone might enter into Bond. 1 Godb. 165.

7. If the Plaintiff alleges that the Award was made of four Things, and the Defendant pleads that it was but of three only, the Plaintiff cannot reply that the Award was of three Things and another, but he ought to reply, that the Award was made of four Things, and traverse that it was of three Things only. Plowd. 95.

8. If in Debt upon a Bond conditioned for the Performance of an Award, so as it be made, &c. and ready to be delivered to the Parties, or to such of them as shall desire the same; the Defendant pleads *Nullum fecerunt Arbitrium*, and the Plaintiff replies and sets forth the Award, and shows a Breach, but doth not say that it was ready to be delivered to the Defendant; yet this is a good Replication,

plication; for when the Award is made, it is ready to be delivered to the Parties, or to such of them who desire it; so that it must be desired, and if denied, the Party may plead that Matter specially. Between *Rowley and Manning*, 9 *Mod.* 330.

9. If in Debt upon a Bond, conditioned for the Performance of an Award in Writing, or by Word of Mouth, the Defendant pleads no Award made, and the Plaintiff replies, That at the Time of the Bond and Award, he had an Action against the Defendant for Scandalous Words, and that the Arbitrators, *ore Tenus*, did declare and publish his Award in Manner following, *viz.* that the Defendant should pay to the Plaintiff 12 Guineas, and all such Money as he had expended *circa Prosecutionem Placit' pred'*, &c. this is a good Award, and well set forth; although the Award doth not mention any Suit before; for he that sets forth a Parol Award, is not tied to the very Words, but it is sufficient to shew the Effect and Substance of what was awarded by Word of Mouth. 2 *Vent.* 242.

10. In Debt upon a Bond to perform an Award, the Defendant pleads no Award made, and the Plaintiff replied, and set forth an Award with a *Profert in Curia*, and there were material Omissions; the Defendant craved *Oyer*, and demurred for the Variance between the Award set forth in the Replication, and the *Oyer*.

11. And in the Argument it was insisted for the Plaintiff, that in Debt on an Award, the Plaintiff need not set forth more of the Award than makes for him; to which it was answered,

answered, that true it is, in Debt upon an Award the Plaintiff need not set forth more than makes for him; but it is otherwise in Debt upon a Bond, for then the Plaintiff must reply the whole Award.

12. And per Holt, Chief Justice, In Debt upon a Bond to perform an Award, if *nul agard fait* be pleaded, and the Plaintiff replies an Award, &c. and Issue is thereupon, in such Case, if there is a material Variance between the Award given in Evidence, and the Award set forth in the Replication, it is against the Plaintiff; but if the Variance be only by Omission of that which is void, that is not a material Variance, being no material Part of the Award; here the Variances are by Omissions that are material, therefore Judgment must be for the Defendant.

Note is added by the Reporter, That if the Plaintiff had not made a Profert, the Defendant's Way had been to have pleaded nul tiel agard.

13. In Debt upon an Obligation conditioned to perform an Award, the Defendant pleaded no Award, and the Plaintiff replied and set forth an Award, whereby it was awarded, that the Defendant should enjoy a Wharf, and that certain Erections should be pulled down within the Space of 58 Days from the Date of the Award; to which the Defendant demurred; and it was objected, that the Award was pleaded without any Date; but yet the Replication was held good, for the Day of the Delivery of a Deed, is the Day of the Date, though there is no Date set forth, as if a Deed bear Date one Day,

Day, and be delivered at another, it was really dated when delivered, though the Clause of *Gerens Dat'* be otherwise; so it is in the Case of the Award, the making is the Date. 1 *Salk.* 76.

14. In Debt upon a Bond for Performance of an Award, *ita quod* the Award be made and ready to be delivered to the Parties in Difference, or to such of them who should desire the same, by such a Time, the Defendant pleaded no Award made.

15. The Plaintiff replied, that the Arbitrators within the Time, &c. made their Award in Writing, which he set forth at large, and assigned the Breach, &c. but did not say that the Award was ready to be delivered to the Parties, according to the Words of the Submission *supra*.

16. And it was objected upon a Demurrer for this Fault, that the Submission being conditional, it should appear that this Condition was performed by the Arbitrators; otherwise their Award would not oblige the Parties; and therefore the Plaintiff ought to shew, that all the Condition was performed; otherwise he hath no Cause of Action.

17. But it was held in this Case, that it shall necessarily be intended, that the Award which was in Writing, was ready to be delivered to the Parties, and therefore good, and the rather, because the Condition is, that it ought to be ready to be delivered when any of the Parties required it; and it doth not appear that it was required by any of them, and therefore it is not requisite it should

should be delivered before Request. *Carth.*
158, 159.

SECT. IV.

Of the Rejoinder, when it shall be
a Departure, or not.

1. A Rejoinder is, when the Defendant
fortifies his Bar with new Matter,
but pursuant to the Bar. *Ch. Lit.* 304.

2. And herein great Care must be taken
that the Rejoinder be not a Departure from
the Defendant's Plea, by introducing new
Matter, which had no Relation to his Plea.

3. And for this Reason it is said, that the
Defendant is not to rejoin in such Words as
are not contained in the Replication or Plea,
for that is to begin a new Discourse of his
own, and not to answer the Plaintiff.

4. Also, if the Defendant in his Rejoinder
pleads new Matter, he must conclude, &
hoc Paratus est verificare; for he ought to
give the Plaintiff Liberty to come in with a
Surrejoinder and Answer to it.

5. Yet it is said, that in many Cases, if
new Matter be averred in the Replication,
if the Defendant alledges a new Answer in
the Rejoinder, it is no Departure. *1 Mod.*

43, 44

6. As where the Condition of an Obliga-
tion was, that the Defendant should stand to
the Award of J. S. between the Defendant
and J. D. Tenants, and the Defendant pleads
nullum fecerunt Arbitrium; and the Plain-
tiff

tiff replies, that the Award was made between the Defendant and Tenants of J. S. and names them; and the Defendant rejoins, that they were not Tenants; this was said to be no Departure, but good; and the Reason seems to be, for the Plaintiff alledged Matter, which gave Occasion for such Plea. 39 H. 6. 16.

7. In Debt upon a Bond conditioned for the Performance of an Award, the Defendant pleaded an Award to pay such a Sum to the Plaintiff at such a Time and Place, and that he tendred it accordingly, and the Plaintiff refused to accept it; and the Plaintiff replied, that it was awarded in Satisfaction of all Controversies, and that the Defendant *non obtulit solvere, Et hoc petit quod inquiratur, &c.* and the Defendant demurred; and it was held by two Judges, that the Plaintiff having alledged new Matters, ought not to have concluded to the Country, by which Means the Defendant is deprived of his Opportunity of traversing it; but the other two held, that the Defendant having admitted the Award good, and taken upon himself to plead Performance, he shall not be admitted to traverse the new Matter, so as to make the Award void; but if in Truth the Money was not awarded in Satisfaction of all Controversies, he should at first have pleaded *Nullum fecerunt Arbitrium*; for if he should now be admitted to prove it no Award, it would be a Departure. 3 Lev. 164.

8. If in Debt upon an Obligation, conditioned to perform an Award, the Defendant pleads no Award, and the Plaintiff replies, and

and sets forth an Award made and tendered, &c. pursuant to the Condition, and the Defendant rejoins, and alledges that the Award was not tendered *modo & Forma Prout*, and concludes *hoc Paratus est verificare*; this Rejoinder is naught on a double Account. First, Because it is a Departure from his Plea in Bar, for in his Plea he denies that any Award was made, and now he implicitly acknowledges it, but pretends that it was not made according to the Condition. 2dly, As his Plea is a direct Negative, he should have concluded to the Country, and not have traversed; for by this Means the Matter can never be put in Issue to be tried. 2 *Saund.* 190.

9. So in Debt on an Obligation to stand to an Award, and the Defendant pleads no Award, and the Plaintiff replies, and shews an Award and a Breach; to which the Defendant rejoins, that a new Cause of Action arose after the Submission and before the Award, and they awarded mutual Releases to be made at the Time of the Award made, and nothing further is awarded on one Side but the Release, and so the Award was void; on which the Plaintiff demurred, and it was adjudged for him, for the Rejoinder is a Departure; for when he pleads no Award, it shall be intended no Award at all; and then to shew and confess an Award in Fact; but saying that it is void in Law is a Departure. Between *Houfe and Launder*, 1 *Lev.* 85. The same Point was afterwards adjudged between *Morgan and Man*, 1 *Lev.* 127. and
S likewise

likewise between Garret and Wooden, 1 Leve
133.

S E C T. V.

Of Demurrers, either to the Declaration, Plea, Replication, &c.

1. **A** Demurrer may be upon a Declaration, Replication, Rejoinder, &c. as well as on a Plea; for all the Parts of pleading to Issue, ought to be according to the Rules of Law, or else the Party may demur thereto; for though by the Statute 4 & 5 Ann. for Amendment of the Law, Want of Form is not sufficient upon a general Demurrer; yet when such Want of Form is made a Cause of the Demurrer, it may prevail; and if there be Want of Substance, a general Demurrer will suffice.

2. The safest Way for the Defendant in most Cases, if he imagines that the Award was not made according to Law, is to demur to the Plaintiff's Declaration, if he sets forth the Award therein, or to his Replication; for when the Submission is by Bond, he cannot plead *nihil Debet* to it; neither can he plead *non submitit*, though he may plead *non est factum*, or that the Arbitrators made no Award; which last is the usual Plea, and then it is incumbent on the Plaintiff to set forth the Award in his Replication; to which the Defendant may demur either generally or specially; in which Case the Court will give

give Judgment for him, if the Award be not made according to Law and the Terms of the Submission; and this will prevent any Danger of having his Rejoinder construed a Departure.

And the same Rules, relating to general and special Demurrers, will be applied to Awards as well as to other Cases.

3. As if in Debt upon an Obligation, conditioned for the Performance of an Award, so as, &c. the Defendant pleads no Award, and the Plaintiff replies, that *ante exhibitionem Bille*, *scil.* the 24th of June, which was a Day within the Submission, the Arbitrators made an Award, *viz.* &c. and the Defendant demurs generally, the Plaintiff shall have Judgment; for though the Plaintiff ought to have replied, that the Arbitrators made their Award before the Day limited to them; yet this is Form only, and helped by a general Demurrer. 1 *Sid.* 370.

4. In Debt upon an Obligation, conditioned to perform an Award, the Defendant pleads no Award, and the Plaintiff replies an Award, that the Defendant should pay to the Plaintiff 15 *l.* at or before the first of December next following, and assigns a Breach that the Defendant did not pay the 15 *l.* upon the said first of December; whereunto the Defendant demurs generally, and Judgment was for him; for although he did not pay it upon the said first of December, he might have paid it before the said first of December; and although Payment before the Day is a good Payment at the Day, where Payment at the Day is pleaded, yet in Pleading the

The Compleat Arbitrator.

Parties ought to pursue the Words of the Condition. 1 Lev. 293. It would be needless to set down all Causes of Demurrer, which in Effect, would be but shewing for what Causes Awards have been held void; which see Chap. VI.

S E C T. VI.

Precedents of Pleadings in Awards.

*Declaration
upon an Arbitration Bond.*

ff. J. S. de, &c. queritur de W. N. &c. in
J. Custodia mar' marefch' Domini Re-
gis coram ipso Rege existen' de Placito
quod reddat ei centum Libr' legalis mone-
te Anglie quas ei debet & injuste detinet
pro eo videlicet quod cum pred' W. N. De-
cimo nono die Augusti Anno Regni Do-
mini Georgii, &c. apud, &c. per Quoddam
script' suum Obligatorium sigillo ipsius W.
N. sigillat' Curieque Domini Regis nunc
hic Ostensum cujus Dat' est eisdem die &
Anno cognovit se teneri & firmit' Obligari
prefat' J. S. in pred' Centum Libr' solvend'
eidem J. S. cum inde postea requisit' esset
predict' tamen W. N. nondum solvit sed
ill' ei hucusq; solvere omnino contradixit
& adhuc contradicit ad Dampnum ipsius
J. S. Decem Librar' & inde Producit se-
ctam, &c.

Plea.

' Et modo ad hunc diem scilicet diem
Lune prox' post Octabis Sancti Hillarii isto
eodem Termino usque quem diem predict'

W. N.

The Compleat Arbitrator.

261

W. N. habuit licent' aud' billam predict' Interloquend' & tunc ad respondend', &c. coram Domino Rege apud Westm' ven' tam predict' *J. S.* per Attorn' suum predict' quam predict' *W. N.* per *T. B.* Attorn' suum & idem *W. N.* defendit vim & injuriam quando, &c. & Per' audit' Scripti Obligator' Pred' & ei legitur, &c. Per' etiam audit' condition' ejusdem scripti & ei legitur in hec verba. ' *Jf.* The Condition of this Obligation is such, That if the above-bounden *W. N.* his Heirs, Executors and Administrators, for his and their Parts and Behalfe, do and shall, in all Things well and truly stand to, obey, abide, perform, fulfill and keep the Award, Order, Arbitrament, final End and Determination of *John Hind*, of the, &c. and *John Cooper*, of the said, &c. Arbitrators indifferently named, elected and chosen, as well on the Part and Behalf of the above bounden *W. N.* as of the above named *J. S.* to arbitrate, award, order, judge and determine, of and concerning all and all manner of Action and Actions, Cause and Causes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, at any Time or Times heretofore had, made, moved, brought, consented, prosecuted, done, suffered, committed or depending by and between the said Parties, or either of them, so as the said Award be made in Writing, and ready to be delivered to either of the said Parties requiring the same, on or before the eighth Hour in the Afternoon of this present

The Compleat Arbitrator.

Day; but if the said Arbitrators do not make such their Award, of and concerning the Premisses, by the Time aforesaid; that then if the said *W. N.* his Executors and Administrators, for his and their Parts and Behalf, do in all Things well and truly stand to, obey, abide, perform, fulfill and keep the Award, Order, Arbitrament, Umpirage, final End and Determination of *P. C. Gent.* of and concerning the Premisses, so as the said Umpire do make his Award or Umpirage of and concerning the Premisses in Writing, and ready to be delivered to either of the said Parties requiring the same, on or before the eighth Hour in the Afternoon of the Day next ensuing the Date of these Presents; then this Obligation to be void, or else to remain in full Force, Strength and Virtue.

Quibus lectis & auditis idem *W. N.* dicit quod predict' *J. S.* Action' suam predict' inde versus eum habere seu manutenere non debet quia dicit quod Predict' Johannes Hind & Johannes Cooper Arbitrator' in Condition' Pred' nominat' nullum fecer' Arbitrium & Ordination' Arbitrium final' conclusion' Anglice *final End* seu Determination' ante Octavam horam post meridiem Pred' decimi noni diei Aug' Anno, &c. supradicto existen' die dat' script' Obligat' predict' sed idem *W. N.* ulterius dicit quod predict' *P. C.* Umpirator in eadem Condition' similiter nominat' accepto super se onere Arbitrandi de & super Premissis in Condition' predict' super specis' Postea & ante horam Octavam post Meridiem diei Prox' sequen' dat' scripti Obligat' Pred' in eadem

‘ eadem Condit’ specificat’ scil’ ad horam
 ‘ Octavam ante meridiem ejusdem diei apud,
 ‘ &c. fecit Umpiragium suum in Scriptis de
 ‘ & super Premissis predict’ adtunc & ibid’
 ‘ Parat’ deliberand’ Partibus pred’ modo &
 ‘ forma sequen’, &c.

Lond’ ff. ‘ **J**ohannes Eyre nuper de Sheffield
 ‘ Manor in Com’ Eborum Gen’
 ‘ al’ Dict’ Johannes Eyre de Sheffield Manor
 ‘ in Com’ Eborum Gen’ summonitus fuit ad
 ‘ Respondend’ Burrowes Trippet Gen’ de
 ‘ Placito quod Reddat ei trecentas Libras
 ‘ quas ei debet & injuste detinet, &c. &
 ‘ unde idem Burrowes per Rich’ Millward
 ‘ Attorn’ suum dic’ quod cum predict’ Jo-
 ‘ hannes nono die Martii Anno Regni Dom’
 ‘ Regis nunc tertio apud London in Paroch’
 ‘ Beate Marie de Arcubus in Warda de
 ‘ Cheap per quoddam script’ suum Obligat’
 ‘ concessit se teneri eidem Burrowes in pred’
 ‘ trecentis Libris solvend’ eidem Burrowes
 ‘ cum inde requisit’ fuisset predict’ tamen Jo-
 ‘ hannes licet sepius Requisit’ predict’ tre-
 ‘ cent’ Libras eidem Burrowes nondum red-
 ‘ didit sed ill’ ei hucusque reddere contradixit
 ‘ & adhuc contradicit unde dic’ quod dete-
 ‘ riorat’ est & Dampnum habet ad Valentiam
 ‘ Centum Librarum & inde Producit sect’,
 ‘ &c. & Profert hic in Curia script’ predict’
 ‘ quod debitum predict’ in Forma predict’
 ‘ testatur cujus dat’ est die & Anno supra-
 ‘ dict’, &c.

*Debt on a
 Bond to per-
 form an A-
 ward.*

Defendant
craves Oyer
of the Condi-
tion.

‘ Et predict’ Johannes per Johannem Ga-
‘ tacre Attorn’ suum ven’ & Defend’ vim
‘ & Injur’ quando, &c. & Pet’ audit’ scripti
‘ predict’ & ei legitur Pet’ etiam audit’ con-
‘ ditionis ejusdem scripti & ei legitur in hec
‘ verba.’ ff. The Condition of this Obliga-
tion is such, That if the above bounden *John*
Eyre, his Executors and Administrators, for
his and their Parts and Behalfe, do in all
Things well and truly stand to, obey, abide,
perform, fulfill and keep the Award, Order,
Arbitrament, final End and Determination
of *Francis Barlow* of *Sheffield*, in the said
County, Gent. and *Robert Soresby* of *Sheffield*
aforesaid, Gent. Arbitrators indifferently
named, elected and chosen, as well on the
Part and Behalf of the above bounden *John*
Eyre, as of the above named *Burrowes Trip-
pet*, to arbitrate, award, order, judge and
determine, of and concerning all and all
manner of Action and Actions, Cause and
Causes of Actions, Suits, Bills, Bonds, Spe-
cialties, Judgments, Executions, Extents,
Quarrels, Controversies, Trespases, Da-
mages and Demands whatsoever, at any
Time or Times heretofore had, made, moved,
brought, commenced, sued, prosecuted,
done, suffered, committed, or depending
by or between the said Parties, or either of
them, so as the said Award be made and
put in Writing, or by Word of Mouth, on
or before the Ninth Day of *April* now next
ensuing; but if the said Arbitrators do not
make such their Award, of and concerning
the Premises, by the Time aforesaid, that
then

then if the said *John Eyre*, his Executors and Administrators, for his and their Parts and Behalls, do in all Things well and truly stand to, obey, abide, perform, fulfill and keep the Award, Order, Arbitrament, Umpirage, final End and Determination of such Umpire as the said *Francis Barlow*, and *Robert Soresby* shall nominate, between the said Parties, of and concerning the Premisses, so as the said Umpire do make his Award or Umpirage, of and concerning the Premisses, by Writing or Word of Mouth, on or before the Sixteenth Day of *April* aforesaid; then this Obligation to be void, or else to remain in full Force, Strength and Virtue.

Quibus Lectis & audit. idem Johannes Eyre Dic' quod predict' Burrows Trippet

Action' suam predict' inde versus eum vir-

tute scripti obligatorii predict' hic in Cur'

prolat' habere non debet quia dic' quod

predict' Franc' Barlow & Rob' Soresby in

Conditione predict' sup'ius mentionat' post

confect' script' obligat' prout hic in Curia

p'lat' & infra tempus predict' in conditione

predict' in ea parte Limitat' nullum fe-

cerunt Arbitrium ordinem Arbitramentum

finalem finem vel determinationem in script'

vel per verbum oris de & super Premissis

in conditione Predict' sup'ius mentionat'

inter prefat' Burrows Trippet & Predict'

Johann' Eyre, & predict' Johannes Eyre

ulterius dicit quod Predict' Franciscus Bar-

low & Rob'tus Soresby post confect' scripti

Obligatorii Predict' hic Cur' p'lat' & infra

Tempus condition' predict' in ea Parte Li-

mitat' scilicet decimo die Aprilis Anno

tertio

*The Defendant
pleads, that
neither the Ar-
bitrators nor
Umpire made
any Award or
Umpirage.*

' tertio supradict' apud London predict' in
 ' Paroch' & Ward' predict' nominaverunt
 ' quendam Franc' Jessopp Arm' fore Umpi-
 ' rator' inter predict' Burrowes Trippet &
 ' prefat' Johannem Eyre de & super Pre-
 ' missis predict' quodque predict' Franc' Jes-
 ' sop sic ut prefertur Umpirat' nominat' in-
 ' fra tempus ei conditione predict' in ea
 ' parte Limitat' nullum fec. Arbitrium sive
 ' Umpiragium aut determinationem de &
 ' concernen' Premissis predict' per scriptum
 ' vel verbum oris & hoc Parat' est verificare
 ' unde Petit Judicium si predict' Burrowes
 ' Trippet Actionem suam predict' inde versus
 ' eum virtute scripti Obligatorii predict' ha-
 ' bere debeat, &c.

*The Plaintiff
 replies and
 says, That
 true it is, that
 the Arbitra-
 tors, nor A. B.
 by them first
 chosen Umpire,
 made no A-
 ward; but they
 say, that af-
 terwards the
 Arbitrators
 chose one J. N.
 who made an
 Award.*

' Et Predict' Burrowes dicit quod ipse per
 ' aliqua Preallegat' ab actione sua predict'
 ' versus prefat' Johannem habend' precludi
 ' non debet quia dic' quod bene & verum est
 ' quod predict' Franciscus & Robert' in Con-
 ' ditione predict' superius nominat' post con-
 ' fectionem scripti obligat' predict' & infra
 ' Tempus predict' in conditione predict' in
 ' ea Parte Limitat' nullum fecerunt Arbitri-
 ' um Ordinem Arbitramentum final' finem
 ' vel determinationem in scriptis vel per ver-
 ' bum Oris de & super Premissis in Condi-
 ' tione predict' superius mentionat' inter pre-
 ' fat' Burrowes & predict' Johannem Eyre
 ' ac quod predict' Francisc' Barlowe & Ro-
 ' bertus Soresby ante Decimum Sextum
 ' diem Aprilis in conditione pred' mentionat'
 ' scilicet die & loco in Placit' predict' men-
 ' tionat' nominaverunt predict' Franc' Jes-
 ' sop

Sop Arm' fore Umpiratore inter predict'
 Burrowes & prefat' Johannem sed Predict'
 Burrowes ulterius dicit quod predict' Fran'
 Jessop adtunc & ibidem fore Umpirator
 inter eundem Burrowes & prefat' Johan-
 nem de & super Premissis penitus Rectusa-
 vit & superinde predict' Franciscus Bar-
 lowe & Robert' Postea adtunc & Ibidem
 scilicet predict' decimo die Aprilis Anno
 tertio supradict' apud London predict' in
 Paroch' & Warda predict' nominaverunt
 quendam Cornel' Clarke Armig' fore Um-
 pirat' inter predict' Burrowes & prefat'
 Johannem Eyre de & super Premissis pre-
 dict' & idem Burrowes ulterius die quod
 predict' Cornelius Postea & ante predict'
 decim' sextam diem Aprilis Anno tertio su-
 pradieto apud London predict' in Paroch'
 & Warda predict' suscepto super se onere
 Umpiragii predict' ore tenus Anglice, *by*
Word of Mouth, arbitravit & ordinavit quod
 predict' Johannes solveret predict' Bur-
 rowes septuagint' Libras super decimum
 nonum diem Maii tunc Prox' sequen' apud
 Domum Johan' Ellifon in Sheffield in Com'
 Eborum inter duodecimam & tertiam ho-
 ras post meridiem ejusdem diei & quod
 post talem solutionem super eundem diem
 apud eundem locum predict' Burrowes &
 Johannes Eyre Arm' eorum alteti invicem
 figillarent general' Relaxationes Pred' ta-
 men Johannes Eyre licet sepius requisit'
 Predict' septuagint' Libras eidem Burrowes
 non solvit juxta formam & effectum Umpi-
 rag' predict' & hoc Parat' est verificare
 unde

The Compleat Arbitrator.

unde petit Judicium & Debitum & Dam-
na sua sibi adjudicari, &c.

*The Defen-
dant's Special
Demurrer.*

Et predict' Johannes dic' quod predict'
Placitum predict' Burrowes superius Re-
plicando Placitat' ac materia in eodem con-
tent' minus sufficien' in Lege existunt ad
predict' Burrowes Actionem suam predict'
versus eundem Johannem habend' manute-
nend' quodque ipse ad Placitum ill' modo
& forma predict' placitat' necesse non ha-
bet nec per legem terre tenetur respondere
& hoc parat' est verificare Unde pro de-
fectu sufficient' Replication' predict' Bur-
rowes in hac parte idem Johannes petit Ju-
diciu & quod predict' Burrowes ab Ac-
tione sua predict' versus eum habendum
Precludatur, &c. Et pro causis morationis
in lege ipsius Johannis in hac Parte idem
Johannis juxta formam Statuti in hujus-
modi casu nuper edit' & provis' ostend' &
curie hic demonstrat has causas subsequen'
videlicet quod non constat per Replication'
ill' quod idem Johannes habuit notitiam
quod Arbitrator' predict' nominav' pred'
Cornelium Clark fore Umpirator' inter
Partes predict' vel quod predict' Corne-
lius habuit aliquam Authoritatem ad faci-
end' aliquod Umpirag' vel fore Umpirator'
inter eosdem Partes de Premissis pred', &c.

*Joinder in De-
murrer.*

Et predict' Burrowes ex quo ipse suffi-
cien' materiam in Lege ad Actionem suam
predict' manutenend' superius replicando
allegavit quam ipse Parat' est verificare
quam

quam quidem materiam predict' Johannes non dedit nec ad eam aliquant' respond' sed verification' ill' admittere omnino recusat idem Burrowes Petit Judicium & Debitum suum predict' una cum Dampnis suis occasione detentionis debiti illius sibi adjudicari, &c. & quia Justic' hic se advisare volunt de & super Premissis predict' priusquam Judic' inde reddant dies dat' est Partibus predict' hucusque a die Sancti Michaelis in tres septiman' de audiendo inde Judic' suo eo quod Justic' hic inde nondum, &c.

London ff. **M**emorandum quod alias scilicet Termino Pasche ultimo preterit' coram Domino Rege apud Westm' venit J. H. per C. B. Attorn' suu' & protulit hic in Cur' Domini Regis tunc ibidem quandam billam suam versus R. H. in Custodia Mar', &c. de placito debiti & sunt Pleg' de Prof' scilicet Johannes Doe & Richardus Roe que quidem billa sequitur in hec verba. ff. London ff. J. H. queritur de R. H. in Custodia Mar' Maresc' Domini Regis coram ipso rege existen' de Placito quod reddat ei quindecim libr' Legal' Monete Anglie quas ei debet & injuste detinet pro eo viz. quod cum quedam lites & discordie habit' & Mot' fuissent inter ipsum J. & Prefat' R. de & concernen' quasdam denar' summas debet' eidem J. per predict' R. pro brasio per ipsum J. predict' R. ante tunc vendit' & deliberat' cumque

Debt on the Award.

The Compleat Arbitrator

cumque etiam pro pacificatione huiusmodi
 litium & discordiarum tam ipse idem J.
 quam predict' R. vicesimo quarto die Octo-
 bris Anno Regni Domini Georg' Secund'
 nunc Regis, &c. apud London predict'
 viz. in Parochia Sancti Dunstani in Occi-
 dent' in Warda de Faringdon extra Lion-
 don submisissent & posuissent se in Arbitri-
 um Ordina'nem determinationem & Judi-
 cium Quorundam T. W. Pandoxator' & R.
 L. Civis & Stationer de London Arbitrat'
 tam ex parte ipsius J. quam ex parte pred'
 R. indifferenter elect' ad arbitrandum or-
 dinandum determinand' & adjudicand' de
 & pro omnibus Actionibus Sectis Querelis
 Controversiis compotis transgression' va-
 rianc' clameis & demand' quibuscunque ad-
 tunc dependen' & existen' inter partes pre-
 dict' a Principio Mundi usque ad predict'
 vicesimum quartum diem Octobris Anno
 supradicto ita quod Arbitratores predict'
 facerunt & declararent Arbitrium suum
 tangen' premiss' in scriptis sub manibus &
 sigillis suis Parat' Deliberand' Prefat' J. &
 predict' R. ad vel ante septimum diem
 Novemb' tunc Prox' sequen' ac si Arbitra-
 tores predict' non Agrearent Arbitrium suu'
 predict' ad & per tempus predict' tunc tam
 prefat' R. quam predict' J. predict' vice-
 simo quarto die Octobris Anno supradicto
 apud London predict' in Parochia & Warda
 predict' Posuiss' se in Arbitrium & Umpi-
 ragium talis Person' qual' Arbitratores no-
 minarent & eligerent ad premissa finiend'
 & determinand' ita quod Umpiragium &
 Arbitrium

Arbitrium hujusmodi Umpiratoris in scriptis posit' forent sub manu & sigillo suo ante vicesimum diem ejusdem mensis Novembris Cumque etiam Arbitratores predicti ad aliquod tempus post predict' vicesimum quartum diem Octobris Anno supradicto & ad vel ante predict' septimum diem Novembris tunc Prox sequen' non agreaverunt fecerunt seu declaraverunt aliquod Arbitrium suum Premiss' predict' tangen' in Scriptis sub manibus & sigillis suis parat' deliberand' prefat' J. & R. juxta Submission' predict' sed Arbitratores predict' Postea scilicet septimo die Novembris Anno supradicto apud London predict' in Parochia & Warda predict' quendam Richardum Weekes de Parochia Sancti Egidii extra Cripplegate in Com' Midd' Brewer Umpiratorem ad Premissa predict' finiend' & determinand' nominaverunt & eligerunt quique idem Richardus Weekes Postea & ante predict' vicesimum diem Novemb' Anno supradict' apud London predict' in Parochia & Warda predict' accept' super se onere Umpiragii & Arbitrii predict' fecit quoddam Umpiragium suum de & super Premissis sub manu & sigillo ipsius Richardi Weekes ac per idem Umpiragium suum Arbitrat' fuit & ordinavit quod pred' R. H. solveret seu solvi causaret prefato J. H. summam quindecim Librarum Legal' Monete infra quatuordecim dies tunc Prox' sequen' in Plen' Omnium Debitorum comp'orum & denariorum summam eidem J. debite per quod Actio accrevit eidem J. ad exigend' & habend' de predict' R. predictas quindecim

‘ quindecim libras Predict’ tamen R. licet
 ‘ sepius requisit’, &c. pred’ quindecim libras
 ‘ eidem J. nondum solvit sed illas ei hucus-
 ‘ que Omnino contradixit & adhuc contra-
 ‘ dicit ad Dampnum ipsius J. viginti Libra-
 ‘ rum & inde producit sectam, &c.

Plea.

‘ Et modo ad hunc diem scilicet diem Ve-
 ‘ neris prox’ post tres septimanas scilicet Mi-
 ‘ chaelis isto eodem termino usque quem
 ‘ diem predict’ R. H. habuit licenc’ ad billam
 ‘ predict’ interloquend’ & tunc ad Respond’,
 ‘ &c. coram Domino Rege apud Westm’
 ‘ ven’ predict’ J. per Attorn’ suum predict’
 ‘ quam predict’ R. per J. H. Attorn’ suum
 ‘ & idem R. defendit vim & injuriam quan-
 ‘ do, &c. & dicit quod predict’ J. H. Acti-
 ‘ onem suam predictam inde versus eum ha-
 ‘ bere seu manutenere non debet, quia dicit
 ‘ quod billa predict’ ipsius J. exhibita fuit
 ‘ Octavo die Aprilis Anno Regni Domini
 ‘ Regis nunc, &c. & non antea, quod-
 ‘ que causa Actionis super quam predict’ J.
 ‘ versus predict’ R. superius narravit non
 ‘ accrevit infra sex annos prox’ ante exhibiti-
 ‘ onem billæ predict’ & hoc paratus est veri-
 ‘ ficare unde petit Judicium si predict’ J.
 ‘ Actionem suam predict’ inde versus eum
 ‘ habere seu manutenere debeat, &c.

Demurrer.

‘ Et predict’ J. H. dic’ quod ipse per ali-
 ‘ qua per predict’ R. superius Placitando al-
 ‘ legat’ ab actione sua predict’ inde versus
 ‘ ipsum R. habend’ precludi non debet quia
 ‘ dicit quod placitum predict’ per ipsum R.
 ‘ modo & forma predict’ superius placitat’
 ‘ materia-

‘ materiaque in eodem content’ minus suffici-
 ‘ en’ in Lege existunt ad predict’ 7. ab Ac-
 ‘ tione sua predict’ inde versus ipsum R.
 ‘ habend’ precludend’ ad quod ipse idem 7.
 ‘ necesse non habet nec per legem terre tene-
 ‘ tur aliquo modo respondere & hoc Parat’
 ‘ est verificare unde pro Defectu sufficien’
 ‘ Respons’ in hac parte ipse idem 7. petit
 ‘ Judicium & debitum suum Predictum una
 ‘ cum Dampnis suis occ’one detentionis de-
 ‘ biti illius sibi adjudicari, &c.

‘ Et predict’ R. dicit quod placitum pred’ *Joinder in De-*
 ‘ per ipsum R. modo & forma Predict’ supe- *murrer.*
 ‘ rius Placitat’ materiaque in eodem content’
 ‘ bon’ & sufficien’ in lege existunt ad pred’
 ‘ 7. ab Actione sua predict’ inde versus ip-
 ‘ sum R. habend’ precludend’ quod quidem
 ‘ Placitum materiamque in eodem content’
 ‘ ipse idem R. Parat’ est verificare & probare
 ‘ prout Cur’, &c. & quia predict’ 7. ad
 ‘ placitum illud non Respond’ nec ill’ hucus-
 ‘ que aliquo modo dedit ipse idem R. ut prius
 ‘ petit Judicium & quod predict’ 7. ab Ac-
 ‘ tione sua predict’ inde versus ipsum R. ha-
 ‘ bend’ preclud’, &c. Sed quia Curia Do-
 ‘ mini Regis nunc hic inde nondum, &c. ad
 ‘ quem diem coram Domino Rege apud
 ‘ Westm’ ven’ partes predict’ per Attorn’
 ‘ suos predict’ super quo vis. & per cur’ dicti
 ‘ Domini Regis hic omnibus & singulis Pre- *Judgment.*
 ‘ missis plenius intellect’ maturaque delibera-
 ‘ tione inde habita pro eo quod videtur cur’
 ‘ Domini Regis hic quod placit’ predict’ R.
 ‘ predict’ modo & forma predict’ superius
 ‘ placitat’ minus sufficien’ in Lege existit ad
 ‘ Preclu-

‘ Precludend’ p̄fat’ 7. ab Actione sua p̄d’
 ‘ versus p̄dict’ R. habend’ conf. est quod
 ‘ p̄dict’ 7. recuperet versus p̄fat’ R. de-
 ‘ bitum suum p̄dict’ necnon decem Libras
 ‘ pro Dampnis suis que sustinuit tam occasi-
 ‘ one deten’onis debiti illius quam pro misis
 ‘ & Custag’ suis per ipsū circa sectam suam
 ‘ in hac parte apposit’ eidem 7. per Cur’
 ‘ dicti Domini Regis nunc hic ex assensu suo
 ‘ adjudicat’ & quod p̄dict’ R. in Mi’a, &c.

*Debt upon an
 Award, in
 which the A-
 ward is set
 forth.*

Suff. ff. ‘ **M**emorandum quod alias scilicet
 ‘ Termino Sancti Michaelis
 ‘ ult’ preterit’ coram Domino Rege apud
 ‘ Westm’ venit T. C. per E. N. Artorn’ suū
 ‘ & protulit hic in cur’ dicti Domini Regis
 ‘ tunc ibidem quandam billam suam versus
 ‘ W. H. Gen’ in Custod’ Mar’, &c. de pla-
 ‘ cito debiti & sunt Pleg’ de prof. scilicet Jo-
 ‘ hannes Doe & Richardus Roe que quidem
 ‘ billa sequitur in hec verba ff. Suff. ff. T. C.
 ‘ queritur de W. H. Gen’ in Custod’ Mar’
 ‘ maresch. Domini Regis coram ipso Rege
 ‘ existen’ de placito quod reddat ei novem
 ‘ libras legalis monete, &c. quas ei debet &
 ‘ injuste detinet pro eo viz. quod cum duo-
 ‘ decimo die Septembris Anno Regni Do-
 ‘ mini Georg’ Secundi nunc Regis Magne
 ‘ Britann’, &c. tertio quedam secte & Con-
 ‘ troversie mot’ habit’ & pendent’ fuissent in-
 ‘ ter ipsos T. W. pro pacificatione & deter-
 ‘ minatione quarundam quidem Sectarum &
 ‘ Controversiarum idem T. & W. p̄dict’
 ‘ Duodecimo die Septembris Anno supradict’
 ‘ apud Halesworth in Com’ p̄d’ submissis
 ‘ sent

sent festinare arbitrio Ordinationi & Judicio
 quorundam *W.* & *E.* Arbitratorum inter eos
 indifferenter electorum ita quod Arbitrium
 illud fieret per eosdem Arbitratores de &
 super Premissis ante ultim' diem Termin
 Sancti Mich' tunc Prox' sequen' si possent
 & si non possent tunc Arbitrio & finali Ar
 bitrationi ejusdam Edwardi Cooke Arm'
 Umpiratoris inter eosdem *T.* & *W.* indiffe
 renter elect' ita quod Arbitrium illud fieret
 de & super Premissis ante predict' ultim'
 diem Termin Sancti Michaelis & idem *T.*
 in facto dicit quod predict' *W. C. & E. N.*
 Nullum fecerunt nec facere Potuerunt ali
 quod Arbitrium inter Partes predict' de &
 super Premissis ante eundem ult' diem ter
 mini Sancti Michaelis unde predict' Edwar
 dus Cooke habens notic' & accepto super
 seronere Arbitrii predict' postea & ante
 predict' ultim' diem predict' Term' Sancti
 Michaelis scilicet vicesimo Septimo die
 Novembris Anno Regni dicti Domini Re
 gis nunc, &c. apud Halesworth predict'
 Arbitrat' fuit inter eosdem *T.* & *W.* de &
 super Premissis in forma sequen' viz. quod
 predict' *W.* super vicesimum quartum diem
 Decembris tunc Prox' sequen' solveret ei
 dem *T.* novem Libras tam pro Denar' per
 predict' *W.* eidem *T.* debit' quam pro mis.
 & Custag' ipsius *T.* in & circa prosecu'on'
 & defenc'on' separal' sectarum predict' &
 quod super solutionem predict' novem Li
 brarum iidem *T.* & *W.* darent alter alteri
 general' acquitanc' per quod Actio accrevit
 eidem *T.* ad exigend' & habend' de Prefato
W. predict' novem Libras predict' tamen

The Compleat Arbitrator.

W. licet sepius Requisit', &c. easdem novem Libras eidem Thome nondum solvit sed ill' ei hucusque solvere omnino contradixit & adhuc contradicit ad Dampnum ipsius Thome decem librarum & inde pro ducit sectam, &c.

Et modo ad hunc diem scilicet diem Sab-
bati prox' post Octob' Sancti Hillarii isto
eodem Termino usque quem diem predict'
W. habuit Licenc' ad billam predict' inter-
loquend' & tunc ad Respond', &c. coram
Domino Rege apud Westm' venit tam pre-
dict' T. per Attorn' suum predict' quam
predict' W. per W. C. Attorn' suum & i-
dem W. defendit vim & injuriam quando,
&c. & dicit quod predict' T. Actionem
suam predict' inde versus eum habere seu
manutenere non debet quia dicit quod nar-
rac'o predict' materiaque in eadem content'
minus sufficien' in Lege existunt ad Actio-
nem predict' T. predict' inde versus ipsum
W. habend' manutenend' ad quam quidem
narrac'on' ipse idem W. necesse non habet
nec per Legem terre tenetur aliquo modo
respondere & hoc Paratus est verificare
unde pro defectu sufficien' narrac'onis in
hac parte ipse idem W. petit Judicium &
quod predict' T. ab Actione sua predict'
inde versus ipsum W. habend' precluda-
tur, &c.

Et predict' T. dicit quod ipse per aliqua
per Predict' W. superius Placitando allegat'
ab Actione sua predict' inde versus ipsum
W. Habend' precludi non debet quia dicit
quod

quod narratio predict' materiaque in eadem content' bon' & sufficien' in Lege existunt ad Actionem ipsius T. predict' inde versus predict' W. habend' manutenend' quam quidem narrac'onem materiamque in eadem content' ipse idem T. Paratus est verificare & probare prout cur', &c. Et quia predict' W. ad narrac'onem illam non respond' nec ill' hucusque aliququaliter dedic' idem T. petit Judicium & debitum suum predict' una cum Dampnis suis occasione detenc'onis debiti illius sibi adjudicari, &c. sed quia Cur' dicti Domini Regis nunc hic de Judicio suo de & super Premissis reddend' nondum advisatur, &c.

London ff. **M**emorandum quod alias sci- *Debt upon the Bond of Submission.*
licet Termino Sancti Hilarii ult' preterit' coram Domino Rege apud Westm' venit M. R. Vid' per T. S. Attorn' suum & protulit hic in Curia dicti Domini Regis tunc ibidem quandam billam suam versus T. M. Ar' de Ascatt in Comitatu Glouc' Ar. in Custodia Mar', &c. de Placito debiti & sunt Plegii de Prosequendo scilicet Johannes Doe & Richardus Roe que quidem billa sequitur in hec verba ff. London ff. M. R. vid. queritur de T. M. Ar' in Custod' Mar' Marefc' Domini Regis coram ipso Rege existen' de Placito quod Reddat ei ducent' Libr' legalis Monete Anglie quas ei debet & injuste detinet pro eo viz. quod cum predict' T. vicesimo quinto die Januarii Anno Domini, &c. apud London viz. in Parochia Beate Marie de

The Compleat Arbitrator.

' Arcubus in Warda de Cheap London per
 ' quoddam Scriptum suum obligatorium si-
 ' gillo ipsius *T.* sigillat' curieque Domini
 ' Georgii Secundi nunc Regis, &c. hic o-
 ' stens. cujus dat' est die & Anno supradict'
 ' cognovit se teneri & firmiter obligari Pre-
 ' fat' *M.* in predictis Ducentis Libris solvend'
 ' eidem *M.* cum inde Requisit' esset, &c.
 ' Predictas Ducentas Libras Prefate *M.* non-
 ' dum solvit sed illas ei hucusque solvere
 ' omnino contradixit & adhuc contradicit
 ' ad Dampnum ipsius *M.* viginti Librarum
 ' & inde Producit sectam, &c.

Plea.

' Et modo ad hunc diem scilicet diem Ve-
 ' neris prox' Post crastinum Sancti Trinitatis
 ' isto eodem Termino usque quem diem pre-
 ' dict' *T. M.* habuit Licenc' ad billam predict'
 ' interloquend' & tunc ad Respondend', &c.
 ' coram Domino Rege apud Westm' venit
 ' tam predict' *M.* per Attornatum suum pre-
 ' dict' quam predictus *T. M.* per *J. S.* At-
 ' tornatum suum & idem *T. M.* defendit
 ' vim & Injuriam quando, &c. & Petit au-
 ' ditum Scripti obligatorii Predicti & ei legi-
 ' tur, &c. Petit etiam Auditum condic'onis
 ' ejusdem scripti obligatorii & ei legitur in
 ' hec verba fl. The Condition of this Obliga-
 ' tion is such, That if the above bounden
 ' *T. M.* his Heirs, Executors, Administrators
 ' and Assigns, and every of them, for his and
 ' their Part and Behalf, shall and do in all
 ' Things stand to, abide, observe, perform,
 ' fulfill and keep the Award, Determination,
 ' final End and Judgment of *H. K.* and *C. G.*
 ' Prebendaries of *Westminster*, and Doctors of
 ' Divinity,

Divinity, Arbitrators indifferently nominated, elected and chosen, as well on the Part and Behalf of the above named *M. R.* to award, arbitrate, judge of, and determine of, for and upon, and concerning all and all manner of Causes of Actions, Suit, Trouble, Debts, Reckonings, Accompts, Sums of Money, Claims and Demands whatsoever, had, made, stirred, moved or depending between the said Parties, at any Time before the Date of the above written, so always as that the said Award, Judgment and Determination of the said Arbitrators, of, for and concerning the Premises, be made and put in Writing indented, under their Hands and Seals, on this side, and before the first of *May* now next ensuing, and one Part thereof delivered, or tendered to be delivered to the said *T. M.* at or within the now Hall of the Dean and Chapter of *Westminster* aforesaid, situate in *Westminster* aforesaid, between the Hours of Two and Five in the Afternoon of the same Day; then this Obligation to be void, or else to be and stand in full Force and Virtue, ' Quibus Lectis & auditis idem *T.* dicit quod predict' *M.* acc'onem suam predictam inde versus eum habere seu manutenere non debet quia dicit quod predicti *H. K. & C. G.* Arbitratores in conditione predict' superius menc'onat' non fecerunt aliquod arbitrium inter predict' *T.* & *M.* in Condi'one predict' nominat' secundum formam & effectum condi'onis illius & Paratus est verificare Unde Perit Judicium si predicta *M.* Acc'onem suam predict' inde

inde versus eum habere seu manutenere
debeat, &c.

Replication.

Et predict' *M. R.* dicit quod ipsa per aliqua per Prefatum *T. M.* superius Placitando allegat' ab Acc'one sua Predict' inde versus ipsum *T.* habend' Precludi non debet quia dicit quod predict' *H. K. & C. G.* Arbitratores predict' in condi'one predict' nominat' post confectionem scripti obligatorii predict' & ante predict' diem Maii in Condi'one predict' similiter menc'onat' scilicet Primo die Februarii Anno Domini, &c. apud London predict' in Parochia & Warda predictis accept' super se onere Arbitrandi ordinandi & adjudicandi de & super Premissis in Condi'one predict' superius specificat' inter predict' *M. R.* & prefat' *T. M.* & adtunc & ibidem fecerunt quoddam Arbitrium suu' in Scriptis indentat' sub manibus & sigillis eorum, de & super Premissis in Conditione pred' superius specificat' ac per idem Arbitrium suum adtunc & ibidem Arbitraverunt & ordinaverunt in modo & forma sequen' viz. quod predict' *T. M.* Executores five Administratores sui solverent Prefate *M. R.* executoribus vel Administratoribus suis summam Centum Librarum Legalis Monete Magne Britannie super Decimum diem Junii tunc prox' sequen' ad vel in communi Aula Pransoria interioris Templi London inter horas secundam & quintam post meriedem ejusdem diei & tam cito quam pred' *T. M.* Executores vel Administratores sui solvissent predictam summam Centum Librarum prefate

prefate *M.* Executoribus vel Administratoribus suis ut prefertur quod ipsa eadem *M.* Executors vel Administratores sui per ejus vel eorum sufficien' factum in scriptis remitteret & relaxaret prefato *T. M.* heredibus executoribus vel administratoribus suis omnes & omnimodas Acc'ones Causas & Causam Acc'onis Sectas Billas Scripta Obligatoria Specialitat' Judicia Executiones Extenta Querelas Controversias Transgressiones Dampna & demand' quecunque ad aliquod tempus ante Predictum vicesimum quintum diem Januarii tunc ultimum Preterit' ante confectionem arbitrii predicti habit' fact' mot' product' commensat' sectat' prosecut' commiss. sive penden' inter predict' *M. R.* & *T. M.* Et super sigillac'onem & execut'onem hujusmodi relaxac'onis per Predictam *M. R.* Executors vel Administratores suos prefato *T. M.* heredibus Executoribus sive Administratoribus suis ut prefertur ipse Predictus *T. M.* Executors vel Administratores sui per ejus vel eorum sufficien. factum in scriptis remitterent & relaxarent prefate *M.* heredibus executoribus sive Administratoribus suis omnes & omnimodas Acc'on' & Acc'ones Causam & Causas Acc'onum Sectas Billas Scripta Obligatoria Specialitat' Judicia Execuc'ones Extenta Querelas Controversias Transgressiones Dampna & Demanda quecunque ad aliquod Tempus habit' fact' mot' product' commensat' sectat' prosecut' commiss. sive Pendent' per sive inter pred' partes pred' vel eorum alteri ante pred' vicesimum quintum diem Januarii tunc ultimum preteritum

teritum ante confectionem predicti Arbitrii & predicta *M. R.* ulterius dicit quod Arbitrium predict' sic in scriptis indentat' sub manibus & sigillis suis eorundem Arbitratorum Postea scilicet, per totum tempus inter horas secundam & quintam post meridiem ejusdem Primi diei Februarii in Predicta aula Pransoria Decani & Capituli Westm' scituat' apud Westm' predict' in Com' Midd' Parat' & Obligat' fuit fore Deliberand' Prefato *T. M.* sed nec ipse nec aliquis alius ex parte sua ibidem venit ad idem Arbitrium recipiend' & ulterius eadem *M.* ulterius dicit quod Arbitrium predict' sic in Scriptis Indentat' sub manibus & sigillis eorundem Arbitratorum per totum tempus inter horas secundam & Quintam post meridiem predict' Primi Diei Maii in Condit'one predicta superius specificat' in predicta aula Pransoria Decani & Capituli Westm' pred' similiter Parat' & Oblat' fuit fore deliberand' prefato *T. M.* sed nec ipse nec aliquis alius ex parte sua ibidem venit ad idem recipiend' & pred' *M.* ulterius dicit, quod licet ipsa eadem *M.* a tempore confec'onis arbitrii predicti hucusque performavit perimplevit & custodivit omnia & singula in Arbitrio Predicto content' ex parte sua Performand' perimplend' & custodiend' secundum formam & effectum ejusdem scripti arbitrii Protestando quod predictus *T.* non performavit seu custodivit aliqua in arbitrio predicto superius specificat' ex parte sua Performand' perimplend' & custodiend' in facto eadem *M.* dicit quod predictus *T.* ante vel super predict'

predict' decimum diem Junii in arbitrio
 predicto specificat' non solvit prefate M.
 pred' centum Libras secundum formam &
 effectum Arbitrii Predicti & hoc Paratus
 est verificare Unde petit Judicium & debi-
 tum suum Predictum una cum Damnis
 suis Occasione detenc'onis Debiti illius sibi
 adjudicari, &c.

Et predictus T. M. dicit quod Arbitrium *Rejoinder*
 pred' sic in scriptis indentat' sub manibus
 & sigillis Predictorum Arbitratorum per
 totum Tempus Predictum inter Predictas
 horas secundam & quintam post meridiem
 pred' Primi Diei Februarii in pred' Aula
 Pransoria Decani & Capituli Westm' sci-
 tuat' apud Westm' in pred' Com' Midd' non
 Parat' sive oblat' fuit fore deliberand' Pre-
 fato T. M. ac quod arbitrium pred' sic in
 scriptis Indentat' sub manibus & sigillis eo-
 randem Arbitratorum per totum predict'
 tempus inter horas secundam & quintam
 post meridiem predicti Primi diei Maii in
 condic'one pred' superius specificat' in pred'
 Aula Pransoria predict' Decani & Capituli
 Westm' pred' non Parat' nec Oblat' fuit
 fore deliberand' Prefat' T. prout pred' M.
 superius replicando allegavit & Paratus est
 verificare Unde ut prius petit Judicium, &
 quod pred' M. ab actione sua pred' inde
 versus ipsum T. habend' Precludatur, &c.

Et pred' M. Dicit quod ipsa per aliqua *Demurren.*
 super predict' T. superius rejungerendo Alle-
 gat' ab Acc'one sua predict' inde versus ip-
 sum T. habend' precludi non debet quia
 dicit

The Compleat Arbitrator.

' dicit quod Placitum predict' per predict' T.
 ' modo & Forma predict' superius rejun-
 ' do Placitat' materiaque in eodem content'
 ' minus sufficien' in lege existunt ad ipsam M.
 ' ab Acc'one sua pred' inde versus pred' T.
 ' habend' Precludend' ad quod ipsa eadem M.
 ' necesse non habet nec per legem terre tene-
 ' tur aliquo modo respondere & Parat' est
 ' verificare unde pro Defectu sufficien' rejun-
 ' c'onis in hac Parte eadem M. Petit Judici-
 ' um & debitum suum predict' una cum
 ' Dampnis suis Occ'one Detenc'onis debiti
 ' illius sibi adjudicari, &c.

*Joinder in De-
murrey.*

' Et predict' T. dicit quod Placitum pred'
 ' per ipsum T. modo & forma predict' supe-
 ' rius rejungend' Placitat' materiaque in eo-
 ' dem content' bon' & sufficien' in lege ex-
 ' istunt ad pred' M. ab Acc'one sua predict'
 ' inde versus ipsum T. habend' precludend'
 ' quod quidem Placitum materiamque in eo-
 ' dem content' idem T. parat' est verificare
 ' & Probare prout Cur', &c. & quia pred'
 ' M. ad Placitum illud non respond' nec ill'
 ' hucusque aliquo modo dedicit idem T. ut prius
 ' petit Judicium & quod predict' M. ab Ac-
 ' c'one sua pred' inde versus ipsum T. ha-
 ' bend' precludatur sed quia Cur' dicti Do-
 ' mini Regis nunc hic de Judicio suo de &
 ' super Premissis reddend' nondum advisatur
 ' dies inde dat' est partibus predict' coram
 ' Domino Rege apud Westm' usque diem
 ' Lune Prox' post tres septimanas Sancti
 ' Mich. de Judicio suo de & super Premissis
 ' audiend' ad quem diem coram Domino
 ' Rege apud Westm' ven' partes predicti per
 ' Attorn'

Attorn' suos pred' super quo visis & per
Cur' dicti Domini Regis nunc hic plenius
intellectis omnibus & singulis Premissis pred'
maturaque deliberac'one superinde habit'
pro eo quod videtur Cur' dicti Domini
Regis nunc hic quod placitum predict' per
predict' T. modo & Forma pred' superius
rejungendo placitat' materiaque in eodem
content' minus sufficien' in lege exist' ad ip-
sam M. ab Acc'one sua predict' versus eun-
dem T. habend' precludend' Conf. est quod
predict' M. recuperet versus Prefatam T.
debitum suum pred' necnon decem libr' pro
Dampnis suis que sustin' tam Occ'one de-
tenc'onis debiti illius quam pro misis &
Custagiis suis per ipsum circa sectam suam
in hac parte appo'it' eidem M. per Cur' dicti
Domini Regis nunc hic ex assensu suo ad-
judicat' & pred' T. in misericordia, &c.

London ff. **M**emorandum quod die Mer- Debt on the
curii prox' post Quin- Bond of Sub-
den' Pasche isto eodem termino coram Do- mission.
mino Rege apud Westm' venit T. V. Ar'
per D. S. Attorn' suum & protulit hic in
Cur' dicti Domini Regis tunc ibidem quan-
dam billam suam versus W. W. de, &c. in
Com' Glouc' Gen' in Custod' Mar', &c.
de Placito debiti, & sunt Plegii de Prof.
scilicet Johannes Doe & Richardus Roe
que quidem Billa sequitur in hec verba
ff. London ff. T. V. Ar' Queritur de W. W.
alias dict' W. W. de, &c. in Com' Glouc'
Gen' in Custodia Mar' Marefc' Domini
Regis coram ipso Rege existen' de Placito
quod

' quod Reddat ei duas mille libras legalis
 ' monete Magne Britannie quas ei debet &
 ' injuste detinet pro eo videlicet quod cum
 ' pred' W. decimo sexto die Aprilis Anno
 ' Regni dicti Domini Georg' Secundi nunc
 ' Regis, &c. apud Lond' pred' videlicet in
 ' paroch' beate Marię de Arcubus in Warda
 ' de Cheap per quoddam scriptum suum ob-
 ' ligatorium sigillo ipsius W. sigillat' curieque
 ' dicti Domini Regis nunc hic ostens' cujus
 ' dat' est eisdem die & Anno cogn' se teneri
 ' & firmiter obligari eidem T. V. in pred'
 ' duabus mille Libris solvend' eidem T. cum
 ' inde requisit' esset predict' tamen W. licet
 ' sepius requisit', &c. predict' duas mille Li-
 ' bras eidem T. nondum solvit sed ill' ei huc
 ' usque solvere omnino contradixit & adhuc
 ' contradicit ad Dampnum ipsius T. centum
 ' Librarum & inde Producit sectam, &c.

Plea and Per-
 formance
 pleaded.

' Et, predictus W. W. per W. S. Attorn'
 ' suum venit & defendit vint & injuriam
 ' quando, &c. & Petit Auditum scripti ob-
 ' ligatorii predict' & ei legitur, &c. Petit et-
 ' am Auditum conditionis ejusdem scripti,
 ' &c. & ei legitur in hec verba. *ff.* The
 Condition of this Obligation is such, That if
 the above bounden, W. W. and J. D. their
 Heirs, Executors and Administrators, for
 their Parts and Behalfts, shall and do in all
 Things well and truly stand to, obey, abide,
 perform, fulfill and keep the Award, Order,
 Arbitrament, final End and Determination
 of J. C. Gent. and J. E. Gent. Arbitrators
 indifferently elected and named, as well on
 the Part and Behalf of the above bounden

W. W.

W. W. as of the above named *T. V.* to arbitrate, award, order, judge and determine, of and concerning all and all manner of Action and Actions, Cause and Causes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, at any Time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending, by or between the said Parties, or any of them, so as the said Award be made by the said Arbitrators, by the Thirteenth Day of *May* next ensuing the Date hereof; and in Case the said Arbitrators do not end the Differences between the said Parties, then all Things shall be referred to Sir *B. T.* Knight and Baronet, as Umpire; who is to make his Umpirage in Writing the twentieth Day of *May* next ensuing, then this Obligation to be void and of none effect, or else to remain in full Force and Virtue. ‘ Quibus lectis & auditis idem
‘ *W.* dicit quod pred’ *T. V.* actionem suam
‘ pred’ versus eam habere non debet quia
‘ dicit quod pred’ *J. C.* & *J. E.* Arbitratores
‘ in Conditione pred’ nominat’ postea scilicet
‘ undecimo die Maii Anno Regni Domini
‘ Regis nunc tertio apud London predict’ in
‘ Parochia & Warda Pred’ fecerunt Arbitrium
‘ suum in scriptis de & super Premissis
‘ pred’ in Condi’one predict’ specificat’ ac
‘ per idem Arbitrium predict’ *J. C.* & *J. E.*
‘ Arbitraverunt quod die Mercurii tertio decimo
‘ die tunc Instantis Maii Pred’ *W. W.*
‘ Heredes Executores & Administratores sui
‘ satisfa-

' satisfacerent contentarent & solverent pre-
 ' dict' *T. V.* Executoribus vel assign' suis ple-
 ' nam summam trium Mille Centum Sexa-
 ' ginta & novem Librarum sexdecim solidi-
 ' rum & trium denar' legalis monete Mag'
 ' Brit' & ulterius Arbitraverunt quod ipse
 ' idem *W. W.* Executores vel Administrato-
 ' res sui super pred' decimum tertium diem
 ' Maii sigillaret & ut factum suum delibera-
 ' ret Predict' *T. V.* heredibus executoribus
 ' & administratoribus suis Plenam & gene-
 ' ralem relaxationem & exonerationem om-
 ' nium & omnimodarum Actionum & Cau-
 ' sarum Actionum Sectarum Billarum Obl-
 ' gation' Specialitat' Judiciorum Execution'
 ' Extent' Querel' Controversiarum Transgr'
 ' Dampnorum & Demand' quoruncunque
 ' ad aliquod tempus ante dat' obligation' hic
 ' in Cur' Prolat' habit' fact' mor' commenf.
 ' sectat' prosecut' commiss' vel Penden' per
 ' five inter Partes predict' & quod predict'
 ' *W.* ulterius dicit quod ipse idem *W.* pred'
 ' decimo die Maii Anno tertio supradicto
 ' apud London predict' in Parochia & Warda
 ' predict' solvit predict' *T. V.* predict' sum-
 ' mam trium Mille Centum Sexaginta &
 ' novem librarum sexdecim solid' & trium
 ' denar' Juxta formam & effectum Arbitrii
 ' predict' ac etiam adtunc & Ibidem sigilla-
 ' vit & ut factum suum deliberavit predict'
 ' *T. V.* plenam relaxationem predict' omni-
 ' nium & omnimod' actionis & Causarum
 ' action' sectarum billarum obligation' spe-
 ' cialitat' Judiciorum execution' extent' que-
 ' rel' controversiarum Transgress' & demand'
 ' supradict' & hoc Paratus est verificare unde
 ' Petit

‘ Petit Judicium si Predict’ T. Actionem
 ‘ suam predict’ inde versus eum habere seu
 ‘ manutenere debeat, &c.

Ebor’ ff ‘ S. L. nuper de, &c. in Com’ *Debt upon the Bond.*
 ‘ S. pred’ Yeoman alias dict’, &c.

‘ sum’ fuit ad respondend’ J. H. Vid. de
 ‘ Placito quod reddat ei centum libras quas
 ‘ ei debet & injuste detinet, &c. & unde
 ‘ eadem J. per T. B. Attorn’ suum dic’ quod
 ‘ cum Predict’ S. vicesimo quinto die Julii
 ‘ Anno Domini, &c. apud W. per quoddam
 ‘ scriptum suum concessisset se teneri eidem
 ‘ J. in predict’ centum Libras solvend’ ei-
 ‘ dem J. cum inde requisit’ fuisset predict’
 ‘ tamen S. licet sepius Requisit’ predict’
 ‘ Centum Libr’ eidem J. nondum reddidit
 ‘ sed ill’ ei hucusque reddere contradixit &
 ‘ adhuc contradicit unde dic’ quod deterio-
 ‘ at’ est & Dampnum habet ad Valenc’ decem
 ‘ libr’ & inde Producit sectam, &c. & Pro-
 ‘ fert hic in Cur’ scriptum Predict’ quod De-
 ‘ bitum predict’ in forma Predict’ Testatur
 ‘ cujus dat’ est die & anno supradictis, &c.

‘ Et Predict’ S. per J. E. Attornatum *Oyer of the Condition.*
 ‘ suum venit & defendit vim & injuriam
 ‘ quando, &c. & Petit Auditum scripti pre-
 ‘ dict’ & ei legitur, &c. Petit etiam Audi-
 ‘ tum conditionis ejusdem scripti & ei legi-
 ‘ tur in hec verba. ‘ The Condition of this
 Obligation is such, That if the above bounden S. L. his Heirs, Executors and Admini-
 strators, for their Parts and Behalfts, shall
 and do in all Things, well and truly stand

U

to,

The Compleat Arbitrator.

to, obey, abide, perform, fulfill and keep the Award, Order, Arbitrament, final End and Determination of *E. D.* of, &c. in the County of *York*, Clerk, and *R. R.* of, &c. in the said County, Gent. Arbitrators indifferently elected and named, as well on the Part and Behalf of the above named *S. L.* as of the above named *J. H.* to arbitrate, award, order, judge and determine, of and concerning all and all manner of Action and Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, at any Time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending by or between the said Parties, or either of them, so as the said Award be made either in Writing or by Word of Mouth, and ready to be delivered to the Parties in Difference, or such of them as shall desire the same, on or before Seven of the Clock in the Afternoon of this present Day; then this Obligation to be void, or else to remain in full Force and Virtue.

‘ Quibus lectis & auditis idem *S.* dic’ quod
 ‘ predict’ *J.* Actionem suam predict’ versus
 ‘ eum habere non debet quia dic’ quod Arbitratores predict’ post confection’ scripti
 ‘ predict’ & ante predict’ septimam horam
 ‘ post meridiem Predict’ vicesimi Quinti diei
 ‘ Julii Anno Domini, &c. Nullum fecerunt
 ‘ Arbitrium inter ipsum *S.* & Prefat’ *J.* de
 ‘ & super premissis in conditione predict’
 ‘ superius specificat’ & hoc Paratus est verifi-
 ‘ ficare unde Petit Judicium si predict’ *J.*
 ‘ Actionem

• Actionem suam Predict' versus eum habere
• debeat, &c.

• Et predict' J. dicit quod ipsa per aliqua *Plaintiff sets*
• Preallegat' ab actione sua Predict' habend' *forth an A-*
• precludi non debet quia dic' quod ipsa ea- *ward made*
• dem J. diu ante confectionem scripti pred' *ore tenus.*
• scilicet Term' Sanct' Trin' Anno Regni
• Domini Regis nunc tertio in Curia ipsius
• Regis de Banco hic scilicet apud Westm'
• in Com' Midd' implacitasset ipsum S. in
• quodam Placito Transgress. super Casum
• pro eo quod idem S. dixisset de Prefato J.
• diversa scandalosa Anglic' verba quod qui-
• dem tempore confectionis ejusdem scripti
• fuit penden' & indeterminat' quodque Ar-
• bitratores Predict' accept' super se onere
• Arbitrii predict' immediate post confection'
• scripti illius scilicet Predict' vicefimo quin-
• to die Julii Anno Domini, &c. supradicto
• & ante septimam horam post meridiem
• ejusdem diei apud W. Predict' Arbitrium
• suum ore tenus de & super Premissis in
• conditione predict' superius mentionat' fe-
• cer' & publicaverunt ac Partibus predict'
• ibidem ante horam illam declaraver' modo
• & forma sequen' videl' quod predict' S.
• solveret eidem J. Duodecim Pecias Auri
• Cuneat' (vocat' *Guineas*) ac omnes tal' de-
• nar' summ' qual' eadem J. erogasset seu
• expendisset in & circa prosecution' Plac'
• predict' quod immediate post hujusmodi
• solution' alt' tam predict' J. quam predict'
• S. daret alteri eorum per scriptum general'
• relaxation' Omnium Action' Causarum Ac-
• tion' demand' quorumcunque usque pred'

The Compleat Arbitrator.

tempus confectionis scripti predicti inter eos
 moven' & eadem J. ulterius dic' quod tem-
 pore confectionis Scripti Obligatorii pred'
 & Arbitrii pred' quelibet Pecia hujusmodi
 Auri (vocat *Guineas*) se attingebat in va-
 lore ad viginti un' solid' & sex denar' quod-
 que adtunc ac predicto tempore confection'
 Arbitrii predicti p'd' J. erogavit & expen-
 didit in & circa Prosecution' Placit' pred'
 summam undecim Librarum septem solid'
 & septem Denar' videlicet apud W. predicti
 unde pred' S. postea scilicet primo die Au-
 gusti Anno Regni Regis nunc tertio apud
 W. predicti habuit notitiam Posteaque sci-
 licet vicesimo die ejusdem Augusti apud W.
 predicti eadem J. requisivit eundem S. ad
 solvend' eidem J. tam predicti duodecim
 Pecias Auri vel valor' inde quam predicti
 undecim Libras septem solid' & septem
 denar' in facto eadem J. dic' quod predicti
 Samuel non solvit eidem J. predicti duode-
 cim Pecias Auri cumat' (vocat *Guineas*) seu
 valor' inde Juxta formam & effectum Ar-
 bitrii illius & hoc Paratus est verificare un-
 de Petit Judicium & debitum suum pred'
 unacum Dampnis suis occasione detentionis
 debiti illius sibi adjudicari, &c.

*Demurver to
 the Replica-
 tion.*

Et predicti S. dicit quod predicti Placit'
 predicti J. superius replicando Placitat' ac
 materia in eodem content' minus sufficien'
 in Lege existunt ad predicti J. ad Actio-
 nem suam predicti versus ipsum S. habend'
 Manutened' quodque ipse ad Placitum il-
 lud modo & forma pred' replicat' necesse
 non habet nec per legem terre tenetur re-
 spondere

‘ spondere & hoc Paratus est verificare Unde
 ‘ pro defectu sufficien’ Replication’ in hac
 ‘ Parte idem S. ut prius petit Judicium &
 ‘ quod pred’ J. ab Actione sua pred’ habend’
 ‘ Precludatur, &c.

‘ Et pred’ J. ex quo ipsa sufficien’ mate- *Joinder in De-*
 ‘ riam in lege ad Actionem suam pred’ ver- *murrev.*
 ‘ sus Prefat’ S. habend’ manutenend’ superi-
 ‘ us replicando allegavit quam ipsa Parat’ est
 ‘ verificare quam quidem materiam idem S.
 ‘ non dedit nec ad eam aliquammodo respond’
 ‘ sed verification’ ill’ admittere omnino recu-
 ‘ sat ut prius petit Judicium & debitum suu’
 ‘ predict’ unacum Damnis suis occasione de-
 ‘ tentionis debiti ill’ sibi adjudicari, &c. &
 ‘ Quia Justic’ hic se advisare volunt de &
 ‘ super Premissis Priusquam Judicium inde
 ‘ reddant dies dat’ est Partibus predict’ hic
 ‘ usque a die Pasche in Quindecim dies de
 ‘ audiend’ inde Judicio eo, &c.

‘ W. H. nuper de, &c. sum’ fuit ad re- *Debt upon a*
 ‘ spondend’ R. S. R. D. & W. S. de Pla- *Bond.*
 ‘ cito quod reddat ei quadraginta Libras
 ‘ quas eis debet & injuste detinet, &c. & unde
 ‘ iidem R. W. R. D. & W. S. per R. S. At-
 ‘ torn’ suum dic’ quod cum Pred’ W. H. se-
 ‘ cundo die Augusti Anno Regni Domini
 ‘ Régis Georg’ Secund’, &c. quarto apud
 ‘ G. per quoddam scriptum suum Obligato-
 ‘ rium concessisset se teneri Prefat’ R. R. &
 ‘ W. in pred’ quadragint’ libris solvend’ eis-
 ‘ dem R. R. & W. cum inde requisit’ fuisset
 ‘ predict’ tamen W. H. licet sepius requisit’
 ‘ pred’

The Compleat Arbitrator.

‘ pred’ quadraginta libras eisdem R. R. &
 ‘ W. nondum reddidit sed ill’ eis hucusque
 ‘ reddere contradixit & adhuc contradicit
 ‘ unde dic’ quod deteriorat’ sunt & Damp-
 ‘ num habent ad valentiam viginti Librarum
 ‘ & inde Producit sectam, &c. & Proferunt
 ‘ hic in Cur’ Scriptum predict’ quod Debi-
 ‘ tum pred’ in forma pred’ testatur cujus dat’
 ‘ est die & anno supradicto, &c.

Oyer of the
 Condition.

‘ Et predict’ W. H. per J. M. Attorn’ suu’
 ‘ venit & defendit vim & injuriam quando,
 ‘ &c. & Petit Auditum Scripti pred’ & ei
 ‘ legitur, &c. Petit etiam Auditum conditi-
 ‘ onis ejusdem Scripti & ei legitur in hec
 ‘ verba. ’ *ff.* The Condition of this Obliga-
 tion is such, That if the above bounden W.
 H. his Heirs, Executors and Administrators,
 for his and their Parts and Behalfts, shall and
 do in all Things well and truly stand to,
 obey, abide, perform, fulfill and keep the
 Award, Order, Arbitrament, final End and
 Determination of *Ambrose Pudsey*, of, &c.
Esq; and *Thomas Parker*, of, &c. *Esq;* Ar-
 bitrators indifferently elected and named, as
 well on the Part and Behalf of the above
 bounden W. H. as of the above named R. R.
 and W. to arbitrate, award, order, judge
 and determine, of and concerning all and
 all manner of Action and Actions, Cause
 and Causes of Action, Suits, Bills, Bonds,
 Specialties, Judgments, Executions, Extents,
 Quarrels, Controversies, Trespases, Damages
 and Demands whatsoever, at any Time here-
 tofore had, made, moved, brought, com-
 menced, sued, prosecuted, done, suffered,
 commit-

committed or depending by or between the said Parties, so as the said Award be made and put into Writing, and ready to be delivered to the Parties in Difference, or such of them as shall desire the same, on or before the eleventh Day of *November* next, then this Obligation to be void, or else to stand in full Force and Virtue. ‘ Quibus

‘ Lectis & Auditis idem *W. H.* dicit quod
‘ predict’ *R. R. & W.* Actionem suam pred’
‘ inde versus eum habere non debent quia
‘ dic’ quod predict’ *A. P. & T. P.* Arbitrato-
‘ res Predict’ post confectionem scripti pre-
‘ dict’ ad vel ante predict’ Undecimum diem
‘ Novembris in Conditione Scripti superius
‘ mentionat’ nullum fecerunt Arbitrium in-
‘ ter Partes predict’ in Conditione predict’
‘ superius spec’ & hoc Paratus est verificare
‘ Unde Petit Judicium si predicti *R. R. & W.*
‘ Actionem suam pred’ inde versus eum ha-
‘ bere debeant, &c.

‘ Et predict’ *R. R. & W.* dicunt quod ipsi
‘ per aliqua per prefat’ *W. H.* superius Pla-
‘ citando allegat’ ab actione sua pred’ versus
‘ eum habend’ precludi non debent quia dic’
‘ quod pred’ *A. P. & T. P.* Arbitratores in
‘ Conditione predict’ superius nominat’ ac-
‘ cept’ super se onere Arbitrandi inter Partes
‘ pred’ de & super Premissis in Conditione
‘ predicta superius mentionat’ post confectionem
‘ onem scripti predict’ & ante pred’ undeci-
‘ mum diem Novembris Anno Regni Domini,
‘ &c. apud *G.* pred’ Arbitratores fecerunt
‘ quoddam Arbitrium suum in scriptis sub
‘ manibus & sigillis suis de & super Premissis
‘ predictis

*The Replica-
tion, setting
forth the A-
ward.*

The Compleat Arbitrator

' predictis adtunc & ibidem partibus pred'
 ' parat' fore deliberand' per quod quidem
 ' arbitrium iidem Arbitratores Arbitraverunt
 ' & Ordinaver' de & super Premissis in Con-
 ' ditione predict' superius spec' modo & for-
 ' ma sequen', videlicet quod pred' *W. H.* bene
 ' & veracit' solveret seu solvi causaret eis-
 ' dem *R. W. R. D. & W. S.* vel eorum alicui
 ' summam quindecim Librar' legalis monete,
 ' &c. ad vel ante Primum diem Decembris
 ' tunc Prox' sequen' qui Arbitratores predict'
 ' Judicaverunt pred' *R. R. & W.* sustinuisse
 ' in Custagiis & Dampnis ratione cujusdam
 ' secte sine causa per dict' *W. H.* versus Ip-
 ' sos *R. R. & W.* prosecut' & ulterius Arbi-
 ' tratores predict' ordinaverunt quod omnes
 ' secte & differentie inter dictum *W. H.* ex
 ' una parte & ipsos Dictos *R. R. & W.* ex
 ' altera Parte que mot' habit' five depend'
 ' fuer' ante diem dat' scripti obligatorii pre-
 ' dict' absolut' cessarent vacue forent & de-
 ' terminarentur prout per idem Arbitrium
 ' inter alia Plenius Liquet & apparet & pre-
 ' dict' *R. R. & W. S.* Protestando quod pred'
 ' *W. H.* non observavit performavit perim-
 ' plevit vel custodivit aliquod in Arbitrio
 ' predicto superius spec' ex parte ipsius *W.*
 ' *H.* observand' Performand' Perimplend'
 ' seu Custodiend' in Facto idem *R. R. & W.*
 ' dicunt quod predictus *W. H.* non solvit pre-
 ' dict' *R. R. & W.* vel eorum alicui sum-
 ' mam quindecim librarum super pred' pri-
 ' mum diem Decembr' tunc Prox' sequen'
 ' dat' Arbitrii predict' quas eis vel eorum ali-
 ' cui super eundem diem solvisse debuit se-
 ' cundum formam & effectum Arbitrii pred'
 ' &

‘ & hoc Parat’ sunt verificare Unde Pet’ Ju-
 ‘ dicitum & debitum suum predict’ unacum
 ‘ Dampnis suis occasione detentionis debiti
 ‘ illius sibi adjudicari, &c.

‘ Et predict’ *W. H.* dic’ quod Placitum *The Defen-*
 ‘ pred’ pred’ *R. R.* & *W.* modo & forma su- *dant’s De-*
 ‘ perius replicando Placitat’ minus sufficien’ *murrey.*
 ‘ in lege existit ad predict’ *R. R.* & *W.* ad
 ‘ Actionem suam predict’ versus ipsum *W.*
 ‘ *H.* habend’ manutenend’ quodque ipse ad
 ‘ replicationem illam modo & forma pred’
 ‘ placitat’ necesse non habet nec per legem
 ‘ terre tenetur respondere & hoc Parat’ est
 ‘ verificare unde pro defectu sufficien’ repli-
 ‘ cationis in hac Parte idem *W. H.* petit Ju-
 ‘ dicitum & quod predict’ *R. R.* & *W.* ab
 ‘ Actione sua predicta versus eum habend’
 ‘ Precludantur, &c.

‘ Et predict’ *R. R.* & *W.* ex quo ipsi suf- *Joinder in De-*
 ‘ ficien’ materiam in lege ad Actionem suam *murrey.*
 ‘ pred’ versus Prefat’ *W. H.* habend’ manu-
 ‘ tenend’ superius replicando allegaverunt
 ‘ quam ipsi Parati sunt verificare quam qui-
 ‘ dem materiam pred’ *W. H.* non dedit nec
 ‘ ad eam aliquammodo respondet sed verifica-
 ‘ tionem illam admittere omnino recusavit
 ‘ iidem *R. R.* & *W.* ut prius petunt Judicium
 ‘ & debitum suum pred’ unacum Dampnis
 ‘ suis occasione detentionis debiti illius eis
 ‘ adjudicari, &c. & quia Justiciarii, &c.

London

*Debt on the
Bond of Sub-
mission.*

London *ff.* ‘Johan’ Crowe nuper de, &c.
‘in Com’ pred’, &c. sum-
‘monitus fuit ad Respondendum Williel-
‘mo Seal de Placito quod reddat ei qua-
‘dragint’ Libras quas ei debet & injuste de-
‘tinet, &c. & unde idem Will’ per Johan’
‘Harris Attorn’ suum die’ quod cum pred’
‘Johannes Crowe vicesimo tertio die Janu-
‘arii Anno Regni Domini Regis, &c. apud
‘B. in Com’ pred’ per quoddam Scriptum
‘suum obligatorium concessisset se teneri ei-
‘dem Willielmo in pred’ quadragint’ Libr’
‘solvend’ eidem Willielmo Seal cum inde
‘requisitus fuisset predict’ tamen Johannes
‘Crow licet sepius Requisit’ pred’ quadra-
‘gint’ libras eidem Willielmo nondum red-
‘didit sed ill’ ei hucusque reddere contra-
‘dixit & adhuc contradicit Unde dicit quod
‘deteriorat’ est & dampnum habet ad valen-
‘tiam viginti librarum & inde produc’ sec-
‘tam, &c. & Profert hic in Cur’ scriptum
‘pred’ quod debitum pred’ in forma pred’
‘testatur cujus dat’ est die & anno supra-
‘dictis, &c.

*Plea and
Oyer of the
Bond and Con-
dition.*

‘Et pred’ Johannes Crowe per Williel-
‘mum Bele Attorn’ suum venit & defendit
‘vim & injuriam quando, &c. & Petit au-
‘ditum scripti predict’ & ei legitur & Petit
‘etiam auditum conditionis ejusdem scripti
‘& ei Legitur in hec verba.’ The Condi-
‘tion of this Obligation is such, That if the
‘above bounden *John Crowe*, his Heirs and
‘Executors, and every of them, for his and
‘their

their Parts and Behalves, shall and do in all Things well and truly stand to, abide, observe and perform, fulfill and keep the Award, Order, Rule, Judgment, and final Determination of O. B. of, &c. and T. H. of, &c. Arbitrators indifferently elected and chosen, as well on the Part and Behalf of the above bounden J. C. as on the Part and Behalf of the above named *William Seal*, to arbitrate, award, order, judge, and finally determine, of, in, and upon all and all manner of Action and Actions, Cause and Causes of Action, Suits, Bonds, Bills, Quarrels, Variances, Trespases, Batteries, Dues, Debts, Reckonings, Accompts and Demands whatsoever, at any Time heretofore had, moved, committed, and depending between the said Parties, or either of them, so as the said Arbitrators do make and declare their Award in the Premises, on this side, or before the tenth Day of *February* next ensuing the Date hereof; and if the said Arbitrators cannot agree, nor no Award shall make in the Premises, then if the above bounden *John Crowe*, his Heirs, Executors and Administrators, and every of them, do well and truly stand to, abide, perform, fulfill and keep the Award, Umpirage, and final Determination of *William Smith*, of, &c. an Umpire indifferently elected and chosen, by the mutual Consent of both Parties, to arbitrate, award, and finally determine, of, in, and upon all and all manner of Actions, Suits, Bonds, Bills, Quarrels, Differences, Trespases, Batteries, Dues, Debts, Reckonings, Accompts and Demands

The Compleat Arbitrator.

Demands whatsoever, at any Time heretofore had, moved, stirred or depending between the said Parties, or either of them, so as the said Umpire do make or declare his Award in the Premisses, on this side or before the eighteenth Day of *February* next ensuing the Date hereof; that then this present Obligation to be void and of none effect, or else to stand and abide in full Force and Virtue. ‘ Quibus lectis & auditis idem ‘ Johannes Crowe dicit quod pred’ Willielmus Seal Actionem suam pred’ versus eum ‘ habere non debet quia dicit quod Arbitratores pred’ in Conditione pred’ mentionat’ ‘ post confection’ scripti obligatorii pred’ & ‘ super vel ante pred’ decimum diem Februarii in Conditione pred’ superius specificat’ ‘ non fecerunt aliquod Arbitrium Ordinem ‘ regulam Judicium sive finalem determinationem inter Prefat’ Johannem Crowe & ‘ predict’ Willielmum Seal de & super Premissis in Conditione pred’ superius specificat’ secundum formam & effectum conditionis illius & idem Johannes ulterius dicit ‘ quod predictus Willielmus Umpirator in ‘ Conditione pred’ specificat’ Post-pred’ decimum diem Februarii in Conditione pred’ specificat’ & ante pred’ decimum Octavum diem Febr’ in conditione illa mentionat’ ‘ scilicet decimo sexto die Februarii Anno ‘ Regni Domini Regis, &c. apud *B.* pred’ ‘ accepto super se onere Umpiragii predict’ ‘ adhuc & ibidem arbitravit ordinavit & adjudicavit inter Partes predict’ de & super ‘ Premissis in Conditione predict’ specificat’ ‘ videlicet quod ipse idem Johannes Crowe
I
‘ Executores

Executores Administratores vel assign' sui
 solverent Prefato Willielmo Seal Executo-
 ribus Administratoribus vel assign' suis sum-
 mam duodecim librarum & decem solid'
 bone & Legalis Monet', &c. super vel
 ante decimum tertium diem Martii tunc
 Proxime sequen' & idem Johannes Crowe
 in facto dicit quod ipse Johannes post con-
 fectionem Umpiragii pred' scilicet predict' *Tender and*
 tertio decimo die Martii in Umpiragio p'd' *Refusal plead-*
 mentionat' apud B. p'd' obtulit p'd' Williel' *ed.*
 Seal p'd' duodecim Libras & decem solid'
 quas pred' Willielmus de eodem Johanne
 recipere adtunc & ibidem recusavit & hoc
 paratus est verificare Unde Petit Judicium
 si predict' Willielmus Seal Actionem suam
 predict' versus eum habere debeat, &c.

Et pred' Willielmus dicit quod ipse per *Replication.*
 aliqua per predict' Johannem Crowe supe-
 rius Placitando allegat' ab Action' sua
 predict' versus ipsum Johannem habend'
 precludi non debet quia dicit quod bene
 & verum est quod predict' Willielmus Smith
 Arbitravit ordinavit & adjudicavit quod
 prefat' Johannes Crowe Executores Admi-
 nistratores vel assign' sui solverent predict'
 Willielmo Seal Executoribus Administra-
 toribus vel assign' suis summam duodecim
 librarum & decem solid' bone & legalis
 monete, &c. super vel ante tertium deci-
 mum diem Martii tunc Proxime sequen' in
 Plenam satisfactionem omnium differentia-
 rum inter predictum Willielmum Seal &
 Prefat' Johannem Crowe sed Predictus
 Willielmus Seal ulterius dicit quod Prefat'
 Johan-

‘ Johannes Crowe non obtulit pred’ Willielmo Seal predict’ duodecim libras & decem
 ‘ solid’ modo & forma prout ipse idem Johannes superius replicando allegavit & hoc
 ‘ Petit quod Inquiratur per Patriam, &c.

Demurrer.

‘ Et predict’ Johannes dicit quod predict’ Placitum pred’ Willielmi Seal superius replicando Placitat’ materiaque in eodem content’ minus sufficien’ in lege existunt ad
 ‘ pred’ Willielmum Seal Actionem suam pred’ versus eum habend’ manutenend’
 ‘ quodque ipse ad Placitum illud modo & forma pred’ Placitat’ necesse non habet nec
 ‘ per legem terre tenetur respondere & hoc Paratus est verificare Unde pro Defectu sufficien’ replicationis pred’ Willielmi Seal in
 ‘ hac parte idem Johannes Petit Judicium & quod pred’ Willielmus Seal ab Actione
 ‘ sua pred’ habend’ precludatur, &c.

Joinder in Demurrer.

‘ Et pred’ Willielmus ex quo ipse sufficien’ materiam in Lege ad Actionem suam pred’
 ‘ versus predict’ Johan’ habend’ manutenend’ superius replicand’ allegavit quam ipse idem
 ‘ Willielmus Parat’ est verificare quam quidem materiam pred’ Johannes non dedit
 ‘ nec ad eam aliquammodo respond’ sed verificationem illam admittere seu recipere omnino recusat idem Willielmus Petit Judicium & debit’ suum pred’ unacum Damnis suis sibi adjudicari, &c. & quia Justitarii hic se advisare volunt de & super Premissis Priusquam Judicium suum inde reddant dies dat’ est Partibus pred’ hucusque
 ‘ a die Pasche in Quindecim dies de Audien-
 ‘ do

do inde Judicio suo eo quod iidem Justic'
hic inde nondum, &c.

Ebor' ff. **M**emorandum quod alias scilicet Termino Pasche ult' *Assumpsit an Awald.*

Preterito coram Domino Rege apud West-
mon' venit Johannes Birks per Emannel Sco-
rah Attorn' suum & Protulit hic in Cur'
dicti Domini Regis tunc ibidem quandam
Billam suam versus Burrowes Trippet
Gen' un' Cl'icor' R. H. mil' Capitalis Cle-
rici Domini Regis ad Placita in Cur' Do-
mini Regis coram ipso rege Irrotuland'
Assign' Presen' hic in Cur' in propria Per-
sona sua de Placito Transgression' super
casum & sunt Plegii de Prosequend'. ff. Jo-
hannes Doe & Rich'dus Roe que quidem
billa sequitur in hec verba. ff. Ebor' ff. Jo-
hannes Birks queritur de Burrowes Trippet
Gen' un' Cl'icor' K. H. mil' Capitalis Cle-
rici Domini Regis ad Placita in Cur' ipsius
Domini Regis coram ipso Rege Irrotuland'
Assign' Presen' hic in Cur' in propria Per-
sona sua pro eo viz. quod cum diverse lites
discordie & secte habite & dependent' fuif-
sent inter ipsum Johannem & pred' Bur-
rowes pro Pacificatione quarum quidem li-
tium & discordiarum & omnium aliarum
Causarum Actionis inter eos dependen-
tam Idem Johann' quam pred' Burrowes
decimo quarto die Aprilis Anno Domini,
&c. apud Doncaster in Com' pred' submi-
sissent se stare Arbitrio Ordini & finali Ju-
dicio cujusdam Francisci Barker Arbitra-
toris inter eos indifferenter electi ad Arbi-
trand'

The Compleat Arbitrator.

' trand' ordinand' & finaliter adjudicand' de
 ' & super Premissis & idem Burrowes postea
 ' ff. eisdem die & anno supradict' apud
 ' Doncaster Predict' in Com' pred' in Consi-
 ' deratione Submissionis pred' ac in Consi-
 ' deratione quod predict' Johannes Prefat'
 ' Burrowes adtunc & ibidem fidelit' Promi-
 ' sisset ad solvend' eidem Burrowes quadragint'
 ' libras legalis monet', &c. quandocunque
 ' ad hoc per ipsum Burrowes Requisit' foret
 ' si Idem Johannes non Performaret & per-
 ' impleret Omnia & singula que Arbitrator
 ' pred' ex parte sua de & super Premissis
 ' Performand' & Perimplend' Arbitraret &
 ' adjudicaret super se Assumpsit & eidem Jo-
 ' hann' adtunc & Ibid' fideliter Promisit
 ' quod si ipse idem Burrowes non Performa-
 ' ret & Perimpleret Omnia & singula que
 ' Arbitrator pred' ex parte sua Performand'
 ' & perimplend' Arbitraret & adjudicaret
 ' quod tunc Idem Burrowes quadraginta li-
 ' bras legalis monet', &c. eidem Johann'
 ' cum adinde requisit' fuisset bene & fideli-
 ' ter solvere & contentare vellet & Idem
 ' Johannes in facto dicit quod Arbitrator
 ' pred' accepto super se onere Arbitrandi
 ' ordinandi & adjudicandi inter ipsum Jo-
 ' hannem & Prefat' Burrowes de & super
 ' Premissis in ejus Arbitrio sic ut Prefertur
 ' Posit' Postea scilicet vicesimo primo ejus-
 ' dem mensis Aprilis Anno Domini, &c.
 ' apud Doncaster pred' in Com' pred' inde
 ' inter eos Arbitravit ordinavit & adjudica-
 ' vit modo & forma sequen' videlicet Impri-
 ' mis quod pred' Burrowes solveret pefat'
 ' Johanni summam decem solidorum pro &
 ' in

in consideratione Dampn' ipsius Johannis
 in quadam Actione Transgress. & insult'
 sustentat' ac etiam viginti solid' plus pro
 curac'one & depasturac'one cujusdam eque
 ipsius Burrowes per pred' Johannem curat'
 & depasturat' & ulterius idem Arbit' Arbit'
 travit & adjudicavit quod pred' Burrowes
 solveret Prefat' Johann' pro curatione cu-
 jusdam bovis & medicinis pro duabus Ju-
 venciis ipsius Burrowes al' decem solid' ac
 etiam ulteriorem summam quatuor librar'
 erga Custag' ipsius Johannis Birks in lege
 expens' super diversas differen' inter eos
 motas que quidem summe in toto se attin-
 gunt ad sex Libras idem Arbitrator Arbit'
 travit & adjudicavit pred' Burrowesolvere
 Prefat' Johanni super vicesimum tertium
 diem ejusdem mensis Aprilis ad Domum
 manc'onat' Henr' Jenkinson in Paroch' de
 Hansworth in Com' Eborum & super Re-
 ceptionem pred' sex librarum general' re-
 laxac'ones sub manibus & sigillis utriusque
 eodem mutuo darentur & deliberarentur ab
 initio mundi usque pred' vicesimum tertium
 diem Aprilis Anno Domini, &c. ac etiam
 quod pred' Burrowes deliberaret Prefato Jo-
 hanni quendam finem concernen' & spec-
 tan' Prefat' Johanni Birks & cuidam Jo-
 hanni Marriot nuper de Paroch' de Hans-
 worth pred' in Com' pred' ac etiam Arbit-
 rator predict' ulterius Arbitravit ordinavit
 & adjudicavit pro Pacificatione discordia-
 rum pred' & in Respect' quiet' pred' Johan-
 nis & Burrowes quod predict' Johannes a
 die Dat' Relaxac'onis pred' cessaret & de-
 sisteret ab omni ulteriori Prosecutione ad
 X general'

' general' Sessionem pacis versus pred' Bur-
 ' rowes & idem Johannes in facto dicit quod
 ' licet idem Johannes bene & fideliter per-
 ' form' & perimplevit omnia & singula in
 ' Arbitrio pred' superius specificat' ex parte
 ' ipsius Johannis Performand' & perimplend'
 ' juxta formam & effectum Arbitrii pred'
 ' idem tamen Burrowes predict' sex Libras
 ' Prefat' Johanni Birks super predict' vi-
 ' cesimum tertium diem Aprilis Anno Domini,
 ' &c. ad vel in pred' Domo mane'onal' ip-
 ' sius Hen' Jenkenfon nondum solvit nec
 ' pred' finem deliberavit secundum formam
 ' & effectum Arbitrii pred' licet idem Bur-
 ' rowes ad hoc per pred' Johannem postea
 ' scilicet vicesimo quarto die Aprilis Anno
 ' Domini, &c. apud Doncaster pred' in Com'
 ' pred' Requisit' fuit pred' tamen Burrowes
 ' promission' & assump' suas pred' in forma
 ' predict' minime curans sed machinans &
 ' fraudulenter intendens eundem Johannem
 ' Birks de pred' quadragint' Libris in hac
 ' parte callide & subdole decipere & de-
 ' fraudare predict' quadragint' Libras eidem
 ' Johanni juxta Promission' & Assump'on'
 ' suas Pred' nondum solvit licet sepius requi-
 ' sit' nec pro eisdem hucusque aliququaliter con-
 ' tentavit Unde idem Johannes dicit quod
 ' ipse deteriorat' est & dampnum habet ad
 ' valentiam Centum Librarum & inde Pro-
 ' ducit sectam, &c.

*The Defen-
 dant's Special
 Plea.*

' Et modo ad hunc diem scilicet diem
 ' Martis prox' post tres septimanas Sancti
 ' Mich' isto eodem Termino usque quem
 ' diem pred' Burrowes habuit licenc' ad Bil-
 ' lam pred' interloquend' & tunc ad respon-
 ' dend'

'dend', &c. coram Domino Rege venit tam
 'pred' Johannes per Attorn' suum predict'
 'quam pred' Burrowes in propria Persona
 'sua & idem Burrowes defendit vim & in-
 'juriam quando, &c. & dicit quod pred' Jo-
 'hannes Birks Acc'onem suam pred' inde
 'versus eum habere seu manutenere non de-
 'bet quia dicit quod bene & verum est quod
 'ipse idem Burrowes & Prefat' Johannes
 'Birks submiserunt seipsos stare Arbitrio or-
 'dini & finali Judicio Prefat' Francisci Bar-
 'ker Arbitratoris inter ipsos indifferenter e-
 'lect' ad Arbitrand' ordinand' & finaliter ad-
 'judicand' de & super Premissis quodque ipse
 'idem Burrowes superinde Assumpsit super
 'se ad Performand' & perimplend' Omnia &
 'singula qu' idem Arbitrator adjudicaret &
 'Arbitraret ex parte ipsius Burrowes fore per-
 'formand' & perimplend' prout pred' Johan-
 'nes superius narrando allegavit sed idem
 'Burrowes ulterius dicit quod post Predict'
 'submissionem nec non pred' Promissionem &
 'Assumpc'on' ipsius Burrowes fact' & ante-
 'quam pred' Arbitrator fecit aliquod Arbi-
 'trium sive final' Judicium inter ipsum Bur-
 'rowes & Prefat' Johann' Birks scilicet vice-
 'simo die Aprilis Anno Domini, &c. apud
 'Doncaster pred' in pred' Com' Ebor' pred'
 'Johannes Indebitatus fuit eidem Burrowes
 'in quatuor libris legalis monete tam pro
 'feodis per ipsum Johannem eidem Burrows
 'ut Attorn' ipsius Johannis ante tunc debet'
 '& ad tunc insolut' existen' quam pro diversis
 'denar' summis per ipsum Burrowes pro eo-
 'dem Johanne ad Instanc' & requisic'on ip-
 'sius Johannis ante tempus illud expendit' &
 'erogat'

'erogat' de quo quidem debito quatuor li-
 'brar' eidem Burrowes per pred' Johannem
 'sic ut Prefertur debet' p'd' Arbitrator postea
 'scilicet eisdem die & anno ult' supradict'
 'apud Doncaster pred' habuit noticiam &
 'idem Burrowes adtunc & ibidem apparere
 'fecit eidem Arbitratori quod pred' quatuor
 'libre fuerunt iuste debet' eidem Burrowes
 '& per pred' Johannem solvi debuerunt ac
 'adtunc & ibidem requisivit eundem Arbi-
 'tratorem facere allocac'on' proinde eidem
 'Burrowes per Arbitrium ipsius Arbitratoris
 'inter ipsum Burrowes & pred' Johannem fi-
 'niend' & idem Burrowes ulterius dicit quod
 'pred' Arbitrator postea scilicet pred' vicesi-
 'mo die Aprilis anno, &c. apud Doncaster
 'pred' Arbitrium suum pred' fec' inter ipsum
 'Burrowes & Prefat' Johannem absque ali-
 'qua allocac'one sive considerac'one eidem
 'Burrowes habita de vel concernen' pred'
 'debitum quatuor librar' eidem Burrowes
 'per predict' Johannem sic ut Prefertur, de-
 'bit' & insolut' existen' non obstan' predict'
 'noticia & probatione inde eidem Arbitratori
 'per ipsum Burrowes sic ut Prefert' dat' &
 'fact' & hoc idem Burrowes Parat' est veri-
 'ficare Unde petit Judicium si predict' Jo-
 'hannes Acc'onem suam predict' super pred'
 'script' Arbitrii modo & forma pred' fact'
 'versus ipsum Burrowes habere seu manu-
 'tenere debeat, &c.

F I N I S.



li-
em
ea
&
&
re
or
es
ac
i-
m
is
i-
d
i-
er
m
-
n
p
s
-
p
i
-
-
-
-